

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

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GOLDEN BETHUNE-HILL, an  
individual, et al.  
vs.  
VIRGINIA STATE BOARD OF ELECTIONS,  
et al.  
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: Civil Action No.  
: 3:14cv852  
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: October 10, 2017  
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COMPLETE TRANSCRIPT OF THE BENCH TRIAL

BEFORE: THE HONORABLE ROBERT E. PAYNE  
THE HONORABLE BARBARA M. KEENAN  
The HONORABLE ARENDA L. WRIGHT ALLEN

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1 THE CLERK: Case No. 314-cv-852. *Golden*  
2 *Bethune-Hill, et al. v. The Virginia State Board of*  
3 *Elections, et al. and the Virginia House of Delegates, et*  
4 *al.*

5 The defendants are -- the plaintiffs are represented  
6 by Kevin Hamilton, Abha Khanna and Aria Branch.

7 The Virginia State Board of Elections is represented  
8 by Matthew McGuire.

9 The Virginia House of Delegates is represented by Amy  
10 Tolbert, Mark Braden, Katherine McKnight and Richard  
11 Riley. Are counsel ready to proceed?

12 MR. HAMILTON: We are, Your Honor.

13 MR. BRADEN: Yes, Your Honor.

14 MR. MCGUIRE: Yes, Your Honor.

15 JUDGE PAYNE: Good morning. We are ready in the  
16 Bethune-Hill case. And I believe you got the directive  
17 that we'd like to hear about 15 minutes. Is the defendant  
18 going to make any argument?

19 MR. MCGUIRE: No, Your Honor. We have a brief  
20 opening statement, but otherwise we're going to join with  
21 the Defendant-Intervenors.

22 JUDGE PAYNE: All right.

23 All right. For the plaintiff.

24 MR. HAMILTON: Good morning, Your Honors. It's  
25 a pleasure to be here. My name is Kevin Hamilton, and I

1 appear today on behalf of the plaintiffs. Thank you for  
2 the opportunity to appear with you today. During my  
3 opening remarks, there's going to be a few illustrative  
4 exhibits displayed on the screens. They have been shared  
5 with opposing counsel, and there's paper copies before  
6 you.

7 The equal protection clause of the 14th Amendment  
8 forbids race-based redistricting absent a compelling state  
9 interest and even then, only when narrowly tailored to  
10 meet that state interest. The evidence will show that in  
11 2011, the Virginia State General Assembly used race as a  
12 prominent factor in the drawing of these 11 House of  
13 Delegates districts at issue in this case, had no  
14 compelling state interest for doing so, and even if it did  
15 have a compelling state interest, failed to narrowly  
16 tailor the districts to those -- to that state interest.

17 The Court, of course, has already held a trial in  
18 this matter in 2015 and has had the opportunity to review  
19 the parties' trial briefs as well as the expert reports  
20 admitted on both sides. And, of course, the Court has had  
21 additional guidance from the Supreme Court which  
22 emphasized the importance of examining predominance  
23 district wide because focusing on particular portions in  
24 isolation may obscure the significance of relevant  
25 district-wide evidence such as stark splits in the racial

1 composition of populations moved into and out of disparate  
2 parts of the district or the use of an expressed racial  
3 target, closed quote. So in my limited time this morning,  
4 I wanted to emphasize just a few key facts that we believe  
5 will be established beyond reasonable dispute during the  
6 course of this trial and highlight some of the additional  
7 evidence that we will present to the Court.

8 Let me start with racial predominance. The Supreme  
9 Court called on this Court to do a holistic analysis to  
10 determine whether race predominated in the challenged  
11 districts. A holistic evaluation of evidence, including  
12 both direct and circumstantial evidence, shows that race  
13 drove this redistricting process from start to finish.  
14 Indeed, stark splits in the racial composition of  
15 populations moved in and out of the disparate parts of the  
16 district, and widespread and now admitted use of an  
17 expressed racial target can hardly be disputed at this  
18 point.

19 First, despite the all-consuming battles in the first  
20 trial, there is now no dispute that Delegate Jones, the  
21 principal architect of the challenged district, used a  
22 55 percent black voting age population figure as an  
23 expressed racial target in structuring the districts. As  
24 the interveners admitted at the pretrial conference just  
25 last week, they no longer dispute this central fact, and,

1 of course, they can't, really, because the evidence is  
2 just overwhelming.

3 JUDGE PAYNE: Both the Supreme Court and this  
4 court have held that it's the law of the case, and we  
5 don't need to proceed with it or actually hear any  
6 evidence about it, do we?

7 MR. HAMILTON: Thank you, Your Honor. The  
8 evidence will show that a 55 percent expressed racial  
9 target had a direct and significant impact on the district  
10 lines. Black voters were strategically sorted into and  
11 out of the challenged districts to make sure each district  
12 reached that expressed racial target. White voters were  
13 carefully shuffled around to ensure that they dilute the  
14 black voting age population of any challenged district.  
15 The evidence will show careful separation of white areas  
16 from black areas, splitting cities like Hopewell,  
17 neighborhoods like The Fan district in Richmond, counties  
18 like Chesterfield and even specific VTDs throughout the  
19 state. The racial sorting that occurred in the challenged  
20 districts was calculated, mechanical and extreme and it  
21 was successful. In the end, every challenged district  
22 reached at least 55 percent BVAP.

23 Delegate Jones had to stray far from traditional  
24 redistricting principles to ensure that all 12 very  
25 different districts complied with this racial target, and

1 indeed, as we will show, Delegate Jones sacrificed  
2 virtually every traditional redistricting principle when  
3 drawing the challenged districts. And he did so far more  
4 often in the challenged districts than he did in the  
5 nonchallenged districts. Only one rule was never broken,  
6 and that was the 55 percent expressed racial target.

7 To help the Court understand how race drove the  
8 redistricting process, the plaintiffs will present the  
9 testimony of two additional expert witnesses. First,  
10 Dr. Rodden from Stanford University will walk the Court  
11 through density maps to show precisely how the district  
12 lines were drawn to capture black populations and exclude  
13 white populations. Dr. Maxwell Palmer from Boston  
14 University will further demonstrate the stark racial  
15 differences between the populations moved in and moved out  
16 of the challenged districts and will establish that  
17 partisan politics simply can't explain these district  
18 lines, as well as race.

19 Plaintiffs will also present testimony from delegates  
20 and former delegates, some of whom were intimately  
21 involved in the redistricting process. With that  
22 evidence, this court will be able to understand how race  
23 drove the redistricting process both at the macro level  
24 and at the micro level. The macro level, Delegate Jones  
25 carefully sorted voters among the challenged districts by

1 race. Some districts needed additional black population  
2 to achieve 55 percent black voting age, and therefore,  
3 Jones, Delegate Jones, carefully moved black voters from  
4 other districts into these recipient districts.

5 In other cases, the districts had too many black  
6 voters and they had voters to spare, and those served as  
7 donor districts to the neighboring districts. And so  
8 Jones took black voters out of these and shuffled them  
9 into neighboring districts in order to ensure that all the  
10 districts reached 55 percent. All of the districts were  
11 governed by this nonnegotiable racial rule. All of them  
12 saw populations moved in and out in service of that rule.  
13 That is precisely the sort of racial sorting that the  
14 Supreme Court has relied on to find that race has  
15 predominated.

16 And it's clear at the micro level, too, in the  
17 illustrative display you can see that the voting  
18 tabulation districts themselves were split along racial  
19 lines. The map splits populations in 32 VTDs between  
20 challenges and nonchallenged districts. In every one you  
21 can see careful attention to race as the line curves and  
22 snakes to separate black population from white population.  
23 All of the splits are such that the higher black voting  
24 age population is assigned to a challenged district and  
25 the lower BVAP portion is assigned to a nonchallenged



1 district. This isn't an accident. No traditional  
2 redistricting principle can explain these race-based  
3 splits.

4 The Court will hear from interveners a variety of  
5 other factors that supposedly played some role in the  
6 redistricting process. As an initial matter, these post  
7 hoc explanations cannot be taken at face value. For  
8 example, Delegate Jones previously testified that many of  
9 his decisions were driven by requests from other  
10 delegates, but testimony from many of those delegates that  
11 we'll hear this morning will directly undercut that  
12 testimony. Moreover, even if factors other than race  
13 played some role, it's irrelevant as a matter of law.  
14 Race can predominate even if the legislature pursues other  
15 nonracial goals in addition to its racial goals, and that  
16 is exactly what happened here. Every rule, principle or  
17 criterion was compromised at some point with the sole  
18 exception of the 55 percent black voting age population.

19 Let me turn to narrow tailoring and just make a  
20 couple of points. Intervenors will argue that their  
21 race-based approach was narrowly tailored to serve a  
22 compelling government interest; namely, compliance with  
23 the Voting Rights Act, but the evidence will not support  
24 that argument. First, Delegate Jones did not tailor his  
25 use of race to a compelling government interest. It's no

1 longer disputed, as Your Honor just pointed out, that the  
2 55 percent racial target was created primarily to address  
3 District 75. And then in the words of both this Court and  
4 the Supreme Court, quote, applied across the board to all  
5 12, closed quote, challenged districts. That means the  
6 55 percent rule served no government interest in the  
7 remaining 11 districts.

8 The Court's prior opinion set out all the factors  
9 that gave rise to the 55 percent rule: Conversations  
10 between Delegate Jones and Delegate Tyler, who represents  
11 District 75, Delegate Jones' understanding of District  
12 75's election results, the prison population in that  
13 district and so on. But when Delegate Jones turned to the  
14 other districts, he didn't do anything remotely close to  
15 the same analysis, which he will admit, he didn't look at  
16 voter turnout. He didn't look at racial voting patterns.  
17 He didn't look at registration rates. And with only a  
18 handful of very limited and dated exceptions, he didn't  
19 look at election results. He didn't put any of the  
20 districts on the table and compare them to District 75 and  
21 ask do they need 55 percent black voting age population to  
22 ensure that the minority population could elect a  
23 candidate of their choice in that district.

24 Simply put, Delegate Jones didn't conduct any  
25 meaningful analysis of the other 11 challenged districts,

1 choosing instead to sort voters by race in a  
2 one-size-fits-all approach. This is, in fact, far more  
3 suspicious than the numerical target in Alabama, which was  
4 at least tailored to individual districts. This ignored  
5 the differences between districts.

6 Second, the evidence will show that Delegate Jones,  
7 if he had undertaken a functional analysis in the 11  
8 remaining challenged districts, he would have found no  
9 reason to believe that the other 11 challenged districts  
10 needed 55 percent black voting age population to ensure  
11 black voters had an opportunity to elect candidates of  
12 their choice. Dr. Palmer's analysis will demonstrate that  
13 there was just one exception, District 75. None of the  
14 intervenors' experts will demonstrate otherwise.  
15 Remarkably, in fact, despite the fact that it's  
16 intervenors' burden to show narrow tailoring, their  
17 experts have provided nothing but incomplete and  
18 inconclusive analyses that do nothing to establish the  
19 necessity of the 55 percent BVAP rule.

20 Now, in its order late last week, the Court asked the  
21 parties to summarize, quote, new evidence addressing  
22 factors other than race that were submitted in the  
23 formation of the district. Candidly, that won't take 15  
24 minutes. That won't take 15 seconds.

25 JUDGE PAYNE: Fifteen minutes was the whole

1 opening statement.

2 MR. HAMILTON: I understand, Your Honor. There  
3 is no such evidence. Remember, intervenors demanded a  
4 whole new round of discovery and a full-blown evidentiary  
5 trial, but they stand before the Court bereft of the very  
6 evidence the Court asked for. In fact, plaintiff is  
7 unaware of a single document produced in this latest round  
8 of discovery that provides new evidence to support  
9 intervenors' position.

10 Now, it's possible that intervenors may try to offer  
11 new evidence at trial. For example, intervenors have  
12 offered exhibits that were never produced in discovery;  
13 maps, for example, that were never contemplated or  
14 prepared by the legislature, never produced in discovery,  
15 never testified by an expert, apparently not even prepared  
16 until the last -- to the very eve of trial. One can only  
17 presume that these maps were prepared by an expert outside  
18 the scope of expert discovery and in violation of Rule 26.  
19 We objected. At an appropriate time when the maps are  
20 offered, we will object to those, and the Court should  
21 exclude them.

22 And the intervenors may try and elicit testimony from  
23 Delegate Jones that was not offered at the first trial,  
24 including testimony about additional nonracial factors  
25 that played a role in its decision. These are, of course,

1 the very post hoc justifications that the Supreme Court  
2 cautioned again after reviewing intervenors' evidence on  
3 appeal. Justifications that the legislature, in theory,  
4 could have used, but in reality did not. And the notion  
5 that Delegate Jones would remember more clearly today in  
6 2017 what he did not in 2015 is simply not plausible. At  
7 the very least, the Court should treat that testimony with  
8 a healthy dose of skepticism.

9 At the end of the day, Your Honor, this case --  
10 Honors, this case is a simple case with an overly  
11 complicated record. Delegate Jones applied a  
12 one-size-fits-all expressed racial target to very  
13 different districts scattered across the Commonwealth.  
14 While every other criterion was compromised along the way,  
15 the racial target was not. Extreme racial sorting was  
16 required to comply with the rule, which is illuminated by  
17 stark splits in the racial composition of the populations  
18 moved in and out of disparate parts of the district.  
19 Exactly what the Supreme Court calls for. But Delegate  
20 Jones had no reason to believe that that racial sorting  
21 was required to avoid retrogression, let alone a strong  
22 basis in evidence. In fact, Delegate Jones admits he  
23 didn't even try and assess the necessary level of black  
24 voting age population in any district except District 75.  
25 That mechanical and unjustified use of race offends the

1 14th Amendment. The evidence, both old and new, will  
2 compel a decision for the plaintiffs. And at the  
3 conclusion of the trial, plaintiffs will ask this Court to  
4 invalidate these 11 districts and implement appropriate,  
5 immediate and effective remedies for this General  
6 Assembly's constitutional violations. Thank you, Your  
7 Honor.

8 JUDGE PAYNE: Thank you.

9 Mr. Braden.

10 MR. BRADEN: Good morning, Your Honors. There  
11 are two questions before this Court. Was race a  
12 predominate factor in drawing the 11 challenged districts?  
13 If the answer to that is yes, which I don't believe it is,  
14 but if the Court determines the answer to any of the  
15 districts is yes, then you get to the second question.  
16 Was that district narrowly tailored to support a  
17 compelling state interest? And the compelling state  
18 interest recognized by the Supreme Court is preclearance  
19 under Section 5 of the Voting Rights Act.

20 First, let me acknowledge that we were wrong. "We"  
21 being plaintiffs and defendants. Plaintiffs were wrong in  
22 this case initially because they took the position that  
23 the 55 percent target goal, whatever we want to describe  
24 it, was enough to prove racial predominance. That's the  
25 position of Justice Thomas and Justice Alito. That's not

1 the position of the Supreme Court. They rejected that as  
2 the basis alone to prove predominance. We thought that if  
3 a district wasn't gerrymandered in sort of the textbook  
4 traditional notion of gerrymandering, that that was enough  
5 to prove compliance, and the Supreme Court has told us we  
6 were wrong, too. That's not enough. It's strong evidence  
7 and they have never invalidated a plan that did comply  
8 with traditional redistricting criteria, but they said  
9 that's not enough. The Court directs this Court to do a  
10 holistic analysis, not just to look where the lines look  
11 strange, but to look at the whole districts and to see  
12 whether or not it might be possible for there to be  
13 predominance when there's not conflict. And the Court  
14 expressed significant concern over the notion of post hoc  
15 justifications. Justifications that were just theoretical  
16 justifications instead of reality. And if you look at  
17 Alabama and North Carolina, racial gerrymandering cases,  
18 the Court is also talking about notion of significant  
19 numbers of people being transferred back and forth. So  
20 let me set forth to the Court what evidence we believe is  
21 going to be presented.

22 First of all, it's important to remember where the  
23 burden lies, and the burden lies with the plaintiffs.  
24 It's the plaintiffs' obligation to prove to this Court  
25 that race was predominant. So it appears that the

1 plaintiffs, from their briefs and the reports of their  
2 experts, are going to revisit the traditional  
3 redistricting criteria. We believe the Court has already  
4 made a decision on those 11 districts, that those 11  
5 districts did, in fact, comply with traditional  
6 redistricting criteria. But we're anxious to revisit that  
7 issue, too, if the Court desires. It seems that most of  
8 their support for the notion --

9 JUDGE PAYNE: Are you saying -- if the Court  
10 desires, it's my understanding that both of you decided to  
11 put that in, the plaintiffs fundamentally having  
12 recognized that the rule they argued, which was 55 percent  
13 is enough, doesn't work and they would fail on that  
14 record. If they -- if we were to judge this case only on  
15 the record that existed, you said that you -- in your  
16 opening salvo when we were deciding how to proceed, you  
17 said that they lose and you win as a matter of summary  
18 judgment. You said you wanted to go ahead and augment the  
19 case you had already put on about that. As I understand  
20 it, you wanted to invest those issues as did they. Is  
21 that incorrect or --

22 MR. BRADEN: That's correct. We're firm  
23 believers in belts and suspenders.

24 JUDGE PAYNE: All right. Sorry. Excuse me.

25 MR. BRADEN: No problem, Your Honor. The



1 defendants' case is going to be everything you ever wanted  
2 to know about Virginia redistricting and more. Let no  
3 detail of this process in your mind that's unanswered be  
4 unanswered. Who is coming? Our two fact -- our initial  
5 first two fact witnesses are going to be Delegate Jones,  
6 the sponsor, the drafter, I think the architect of the  
7 bill, the plan, and the consultant who worked with him,  
8 who you might -- if you think of Delegate Jones as the  
9 architect of the plan, then you should think of John  
10 Morgan, who's the consultant, as sort of the carpenter,  
11 the craftsman, the person who worked with Jones at his  
12 direction to draft the plan.

13 We're going to have three expert witnesses who are  
14 going to -- the same three expert witnesses we had before  
15 to address the technical aspects of racial black voting  
16 analysis, and some of the significant statistical problems  
17 this Court recognized before in the analysis of the  
18 plaintiffs' expert, which are repeated here.

19 And we're going to have four delegates come with a  
20 narrower perspective, but their perspective on the  
21 process. Be clear, though. There is available to this  
22 Court, with the limitations of their memory, the  
23 individuals who know every detail about every line who  
24 aren't looking back at drawing the lines. They're looking  
25 at what they did at the time they were drawing the lines.

1 There's no post hoc justifications here.

2       So let me discuss what the testimony is going to be,  
3 but first, I think it's important for this Court to frame  
4 all the testimony you hear in one of the clichés familiar  
5 to people involved in the redistricting process. And it's  
6 to remember that drawing a single House district or  
7 drawing a single representative district is remarkably  
8 easy. You wouldn't even need a computer to do that. We  
9 could go back to the old days of magic markers and maps  
10 and you'd have no problem drawing a district, a single  
11 House district and making the population work and  
12 following traditional redistricting criteria. And, in  
13 fact, you could go to the legislature, when they are in  
14 session, and find every member there prepared to tell you  
15 what their district should look like. That's an easy  
16 process.

17       What's not an easy process, what is a hard process, a  
18 very difficult process, normally described as the most  
19 contentious difficult process in the legislative chamber,  
20 is drawing a hundred district plan. So everyone who  
21 criticizes an individual district, who tells you what's  
22 wrong with that district, you have to put it in the  
23 context of that's that district, that's one little keyhole  
24 look at it. Jones will provide to this Court, in any  
25 level of detail that this Court desires, an outline of the

1 process. The process in Virginia was the perfect process  
2 in the sense of organizationally. Much broader, more  
3 involved than any prior process, more hearings across the  
4 state, the adoption of criteria very similar to ones that  
5 were done ten years before with one important change to  
6 remember; the population deviations were reduced to  
7 1 percent one way or another, which is very important to  
8 remember because that will impact the number of VTDs split  
9 in the state significantly.

10 There's a drafting process. There's a significant  
11 negotiation process. Jones meets with 80 delegates, he  
12 estimates. A very involved process. You'll hear floor  
13 statements, not after-the-fact, looking-back statements,  
14 of the role of the different groups in the legislature in  
15 the line drawing process. This plan got 80 votes, the  
16 majority of the republicans -- no surprise, all the  
17 republicans -- a super majority of the democrats and all  
18 but one of the Black Caucus. You'll hear in detail the  
19 actual drafting, how plans are drafted. Jones and Morgan  
20 will talk about the process of using the computer  
21 software. We'll bring it up and show it to you, how the  
22 plan is done. It's done on a computer. It's done with  
23 Maptitude software. Into that software, census data. The  
24 census includes geography. There's an electronic map of  
25 the United States. Not much of a surprise anymore. I

1 have to admit, it was quite a shock to me 20 years ago  
2 when I saw the first one, but everybody now has one of  
3 these in their cars. But this is a detailed electronic  
4 map of the United States that consists of small building  
5 blocks, which are census tracks -- census blocks, which  
6 are then aggregated up into VTDs, vote tabulation  
7 districts, and those two things are the building blocks,  
8 how you actually create the plan. The data that's  
9 available is geographic data, population data, race data  
10 and political data. Political data, contrary to what you  
11 read, is available to the line drawer at the block level.  
12 The data has been aggregated out to the block level for  
13 Morgan's actual line drawing process, when he draws at the  
14 block level.

15 But let's understand the process. Jones is the  
16 architect of the plan. He draws the plan at the VTD  
17 level, precincts. You've got the data. You put it  
18 together, and you get the basics of a plan. That plan is  
19 done politically. It's finished. He's done the  
20 negotiations, you know, and all the difficulty of trying  
21 to herd cats in the legislature. The actual legislative  
22 process, a little bit messy, and you're going to hear the  
23 messy process, but that messy process of making people  
24 happy in getting the votes you need to pass. That's  
25 drawn.

1           Then -- then John Morgan comes in and goes through  
2 that plan and makes sure it complies with the one person,  
3 one vote criteria adopted, which is 1 percent up and  
4 1 percent down. What does he do? That's when the VTDs  
5 are split. VTDs, precincts, aren't any type of  
6 governmental subdivision. These are simply administrative  
7 convenience. And we draw plans at the VTD level because  
8 that's what we have census information on. But to get the  
9 population down to this population range, John Morgan had  
10 to go through the plan and split VTDs. Virtually -- not  
11 totally, but virtually, without exception, every split VTD  
12 is done to equalize population pursuant to the criteria.  
13 It shows an incredible, profound misunderstanding of the  
14 process for people to use that, then, as the basis to show  
15 predominance. That's just a total misunderstanding of the  
16 process. And that's not terribly surprising because look  
17 at the resumes of their experts. They have zero, zero  
18 experience drawing a plan for a legislative chamber. They  
19 have no plans that they have drafted that have been  
20 adopted by any legislature, much less any experience  
21 drawing a plan in Virginia, much less any Virginia  
22 political experience.

23           This whole VDT analysis is silly. It's too few  
24 people to be the predominant part of it. These districts  
25 are and what's going on in this plan is very simple and

1 straightforward. It's a continuation of the prior plan.  
2 These 11 challenged districts are the same challenged  
3 districts the state of Virginia fundamentally had in 1991  
4 and they are the same challenged districts in 2001.

5 Now, if the Court were to decide, I think wrongly,  
6 that any of these districts are predominately drawn on  
7 race, then we have the second question, narrowly tailored.  
8 I think it's very important to think, on the narrowly  
9 tailored question, what the obligation of the state was.  
10 Preclearance is a different process than sort of the  
11 traditional situation because the burden of proof has  
12 changed. The state has an affirmative duty to get its  
13 plan precleared under Section 5 of the Voting Rights Act.  
14 It has an affirmative duty to prove that the plan did not  
15 retrogress the ability of the minority community to elect  
16 its candidates of choice.

17 Now, how does DOJ make that determination? Well,  
18 they -- a variety of different ways. One of the principal  
19 ways, not surprisingly, is they go to the leaders of the  
20 black community and the members of the legislature and ask  
21 them whether the plan retrogresses. And what do the  
22 leaders of the legislature say? We need 55 percent of the  
23 majority black districts not to retrogress. That's what  
24 they say on the floor. This is not somebody dreaming it  
25 up now and bringing him here. This is what they said at

1 the floor during the debate. This is what they said to  
2 Jones when he was drawing the plan. And we don't -- this  
3 is contemporaneous videotaped floor testimony of that.  
4 That's not a post hoc analysis.

5 As best I can tell, the plaintiffs are arguing some  
6 type of magic number analysis. The last time we tried  
7 this case, their position was that all these districts  
8 needed to be more than 50 percent. And now we're looking  
9 at this and they are objecting to using a goal of  
10 55 percent. Is this really a constitutional claim between  
11 50 and 55 percent? And how would we come up with that  
12 magic number for each district? And which expert would we  
13 believe? We've had a number of experts. Six, I guess, in  
14 the case now. If we brought six more in, we'd get a  
15 different number from each one as to what the magic number  
16 would be. There is no magic number. These statistical  
17 analyses are all, in the end, just estimates based upon  
18 questionable data. There needs to be a range. The Court  
19 told us that we shouldn't have a rule that ties the hands  
20 of the legislature. We should recognize this as  
21 principally a legislative function. Their argument is a  
22 straightjacket, a straightjacket under Virginia, a program  
23 where no legislature could get a plan passed and  
24 precleared. Thank you, Your Honor.

25 MR. MCGUIRE: Good morning, Your Honors. May it

1 please the Court. Matt McGuire from the Attorney  
2 General's Office. Very briefly, on behalf of the  
3 defendants, the members of the Virginia State of  
4 Elections, the Department of Elections and its  
5 commissioner, as this Court is aware, the defendants are  
6 administrative agencies and officials that implement  
7 elections but have no involvement in drawing the districts  
8 being challenged. Throughout the case, the  
9 defendant-intervenors have carried the burden of  
10 litigation and they will continue to do so this week.  
11 Although defendants will not be presenting an independent  
12 substantive case or evidence in defense of the challenged  
13 districts, we join in the arguments of the  
14 defendant-intervenors.

15 In the event that the Court has questions about the  
16 effect that a particular ruling may have on the  
17 defendants' operations or on the administration of  
18 elections, the defendants will endeavor to provide the  
19 Court with that information. Thank you.

20 JUDGE PAYNE: Thank you very much.

21 Mr. Hamilton, call your first witness.

22 MR. HAMILTON: Your Honor, as an initial matter,  
23 we'd like to offer all of the plaintiffs' exhibits that  
24 have not been previously admitted. That would be Exhibits  
25 69 through 90. There are no objections, we understand,



1 from intervenors or defendants.

2 JUDGE PAYNE: Is that correct, no objection?

3 MS. MCKNIGHT: That's correct, Your Honor.

4 JUDGE PAYNE: Admit Exhibits -- Plaintiffs'  
5 Exhibits 69 through 90 are admitted without objection.

6 MR. HAMILTON: Your Honor, Exhibits 1 through 68  
7 were all admitted during the 2015 trial of this matter.  
8 We understand they already comprise the record, are a part  
9 of the record before the Court, and so I wanted to just  
10 take a moment to explain the notebooks behind Your Honor  
11 that have been provided. Those all -- those include  
12 certain of the exhibits that were admitted in 2015, but  
13 not all of them. On the flash drives that were provided  
14 to each chambers it includes a complete, comprehensive  
15 collection of all the exhibits offered by plaintiffs for  
16 the convenience of the Court.

17 Finally, we'd like to offer all of the deposition  
18 designation excerpts. Those were filed last night. They  
19 have been agreed by both parties. I believe all the  
20 objections have been resolved at this point.

21 JUDGE PAYNE: Do they have an exhibit number?

22 MR. HAMILTON: They do not. They were  
23 entered -- they were filed last night.

24 JUDGE PAYNE: What is the ECF number? Do you  
25 know?

McClellan - Direct

1 MR. HAMILTON: I don't know off the top of my  
2 head.

3 JUDGE PAYNE: We'll find that out.

4 MR. HAMILTON: Okay.

5 JUDGE PAYNE: And there's no objection to what  
6 was filed last night, assuming we find out what was filed  
7 last night, Ms. McKnight?

8 MS. MCKNIGHT: That's correct, Your Honors.

9 JUDGE PAYNE: All right.

10 MR. MCGUIRE: Your Honor, it was ECF220-1.

11 JUDGE PAYNE: 220-1? Thank you.

12 MR. HAMILTON: And then finally, for the  
13 convenience of the Court, there is a complete set of  
14 transcripts from the 2015 trial in the notebooks behind  
15 you for ease of reference during the presentation of  
16 evidence.

17 JUDGE PAYNE: All right. The first witness is  
18 who?

19 MR. HAMILTON: It's Jennifer McClellan. My  
20 colleague, Aria Branch, will be doing the examination.

21

22 **JENNIFER MCCLELLAN,**

23 called at the instance of the plaintiffs, having been

24 first duly sworn, testified as follows:

25 **DIRECT EXAMINATION**

McClellan - Direct

1 BY MS. BRANCH:

2 Q Good morning, Senator McClellan.

3 A Good morning.

4 Q Can you please state your name for the record?

5 A Jennifer McClellan.

6 Q And would you please spell your last name?

7 A M-C-C-L-E-L-L-A-N.

8 Q Thank you. What district did you represent at the  
9 time of the 2011 redistricting?

10 A The 71st House District.

11 Q And where is House District 71 located?

12 A It is predominately in the northeast quadrant of the  
13 City of Richmond, parts of The Fan through to east -- East  
14 End of Richmond, most of North Side, and one precinct in  
15 eastern Henrico.

16 Q And you testified in the last trial; is that correct?

17 A Yes.

18 Q Can you remind the Court of the role you played in  
19 the 2011 redistricting process?

20 A Yes. I coordinated requests to Delegate Jones for  
21 changes to the map in -- as introduced from the Richmond  
22 area democratic delegates. So on behalf of myself, Betsy  
23 Carr, who represented the 69th District, and Delores  
24 McQuinn, who represented the 70th District.

25 Q And did you directly communicate with Delegate Jones

McClellan - Direct

1 as part of that process?

2 A Yes.

3 Q Did there come a time -- or when did you first  
4 approach Delegate Jones about the map?

5 A When the original House Bill 5001 was introduced and  
6 that map was made public, I looked at it and had some  
7 concerns about it and went to Delegate Jones to express my  
8 concerns.

9 Q And what were those concerns?

10 A There were two primary concerns. The two extreme  
11 ends of the district were The Fan neighborhood and the  
12 Churchill neighborhood, The Fan to the west and Churchill  
13 to the east. Prior to redistricting, the majority of and  
14 the core heart of The Fan neighborhood was in the 71st  
15 District. In the map, precinct 207, which made up the  
16 bulk of the western portion of The Fan, was completely out  
17 of the 71st District, and precinct 208, which is the  
18 precinct that I lived in, was split between the 71st and  
19 the 69th. And I --

20 JUDGE PAYNE: You're talking about in the  
21 benchmark plan, the previous plan?

22 THE WITNESS: Yes.

23 Q You're testifying about House Bill 5001 --

24 A Yes.

25 Q -- is that correct?

McClellan - Direct

1 A Yes.

2 JUDGE PAYNE: Well, that's what I'm asking her.  
3 I'm trying to understand. Are you talking about how it  
4 was before 501 was introduced or are you talking about  
5 what 501 was?

6 THE WITNESS: I'm explaining what 501 did to the  
7 71st District and why I was concerned and went to Delegate  
8 Jones to express those concerns.

9 JUDGE PAYNE: When you were doing that, you used  
10 the phrase several times to indicate that something was  
11 existing before 501, or maybe I misunderstood you. So  
12 maybe you can sort that out. If you're going to talk  
13 about 501, say -- it's 5001.

14 THE WITNESS: Sorry. Yes.

15 JUDGE PAYNE: Say what 5001 did to the former  
16 district that you were concerned about so we can  
17 understand your concerns.

18 THE WITNESS: Okay.

19 JUDGE PAYNE: Because right now, the way it  
20 looks is that we're mixing what the benchmark plan was,  
21 that's the former plan, with what 5001 proposed, and I'd  
22 like to make sure we don't do that. Do you understand my  
23 problem?

24 THE WITNESS: I do, and I'll try to be more  
25 specific.

McClellan - Direct

1 JUDGE PAYNE: Thank you.

2 THE WITNESS: Thank you.

3 Q So, Senator McClellan, the changes that you were just  
4 discussing, the concerns that you expressed to Delegate  
5 Jones, were those concerns in the -- about the 5001 map?

6 A Yes. Yes. I --

7 JUDGE PAYNE: I'd rather you start again with  
8 them.

9 MS. BRANCH: Okay.

10 JUDGE PAYNE: Because asking the question that  
11 way conflates the two problems; that is, talking about the  
12 past plan that was in existence at the time plus 501 and  
13 it's hard to separate them. And your question just  
14 conflated them again. So start all over again, will you,  
15 about the concerns?

16 MS. BRANCH: Okay.

17 JUDGE PAYNE: Please.

18 Q When did you first approach Delegate Jones about the  
19 map?

20 A When I saw the map for House Bill 5001, when it was  
21 first introduced and made public.

22 Q And what were your concerns about that map?

23 A I was concerned that House Bill 5001 split The Fan  
24 neighborhood, which was the western most part of the 71st  
25 District prior to 5001, it split that neighborhood and put

McClellan - Direct

1 the bulk of it in the 68th District. In doing so, it  
2 split a precinct, precinct 208. So that was my first  
3 concern.

4 On the eastern side of the district, prior to 5001  
5 being introduced, precinct 707, which is the Churchill  
6 neighborhood, was all in the 71st District. Churchill was  
7 split -- prior to redistricting, a small portion of  
8 northern Churchill was in the 70th District. But in House  
9 Bill 5001, that line went into 707 and split 707 and the  
10 Churchill neighborhood along Broad Street. My concern  
11 with that was Broad Street is the historic dividing line  
12 going back to the days of segregation between white  
13 Churchill, which was south of Broad Street, and black  
14 Churchill, which was north and still is north of Broad  
15 Street. And that, in particular, concerned me because to  
16 this day, there are still impacts in the community of that  
17 traditional boundary line, and to make the boundary  
18 between two House districts, that same line caused me a  
19 number of concerns.

20 Q Did you express those concerns to Delegate Jones?

21 A Yes.

22 Q And what was his reaction?

23 A He said he was not very familiar with the Richmond  
24 area and clearly not as familiar as those of us who  
25 represented it. If we came up with a better way to draw

McClellan - Direct

1 the districts that met two criteria, first, the 1 percent  
2 population deviation, and the 55 percent black voting age  
3 population criteria, that he would be open to making  
4 changes that we suggested.

5 Q And subsequent to that, did you create any maps of  
6 your district?

7 A Yes.

8 Q And did the 55 percent black voting age target affect  
9 the way you drew maps?

10 A Yes.

11 Q Did you have an understanding as to whether maps  
12 containing majority black districts with black voting age  
13 populations below 55 percent would be acceptable?

14 A Based on what Delegate Jones told me, I believe  
15 they -- any district that fell below black voting age  
16 population of 55 percent would not be accepted.

17 Q And what was the black voting age population of your  
18 district prior to redistricting?

19 A Based on the 2010 census, it was around 46 percent.

20 Q Did you have an understanding as to whether maps that  
21 contained districts that split counties would be  
22 acceptable?

23 A I assumed they would be because House Bill 5001, in  
24 fact, split counties between districts.

25 Q And did the final map also split counties, House Bill



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1 5005?

2 A Yes.

3 Q How about districts that split predicts? Were they  
4 acceptable?

5 A I assumed they were because House Bill 5001, as  
6 introduced, contained split precincts.

7 Q How about districts that split communities of  
8 interest?

9 A Again, I assumed that would be acceptable because  
10 House Bill 5001, as introduced, did, in fact, split  
11 communities of interest.

12 Q Let's now discuss the specific changes that were made  
13 to your district. First, at a very general level, can you  
14 briefly describe how your district changed after  
15 redistricting?

16 A Yes. It shifted east is sort of broadly what I would  
17 say. The western boundary shifted east to 2008. And I'm  
18 now talking about -- I'm sorry. I'm talking about House  
19 Bill 5005 as signed by the governor, what changes were  
20 made.

21 JUDGE PAYNE: Is that the question?

22 MS. BRANCH: Yes.

23 A So as signed by the governor, the bill shifted the  
24 western boundary of my district in The Fan to the boundary  
25 of precinct 208. In the east, I shifted and picked up

McClellan - Direct

1 three or four precincts in the 7th council district of the  
2 City of Richmond and I picked up one precinct, Ratcliffe,  
3 in eastern Henrico. To the northwest, I lost three  
4 smaller precincts in Henrico County; Hilliard, Stratford  
5 Hall and -- right now I'm blanking on the name of the  
6 third one, and then I picked up a very small portion of  
7 The Fan, precinct 204 that was a piece of The Fan, Scott's  
8 Addition, and the rest was sort of industrial commercial  
9 area. And then in the north, I swapped precinct 301 for  
10 precinct 604.

11 Q And what effect did the shift east have on your  
12 district?

13 A It increased the black voting age population  
14 significantly.

15 Q Senator, let me direct your attention to  
16 Defendant-Intervenors' Exhibit 94. It's page 4 of that  
17 exhibit. You've seen this map before, right?

18 A Yes.

19 Q And do you know how to read this map?

20 A Yes.

21 Q And just so we're all on the same page, the white  
22 hatched areas of this map with no yellow coloring reflect  
23 the areas that were removed from your district in 2011.  
24 The bright yellow areas with no hatching reflect the areas  
25 that were added to your district, and the yellow hatched

McClellan - Direct

1 areas reflect the areas that were in your district prior  
2 to redistricting and remained in your district after the  
3 process was complete.

4 A Okay.

5 Q You mentioned precinct 207. Where is that precinct  
6 located on the map?

7 A The southwest border in the white hashmark.

8 Q And can you describe the racial and political  
9 composition of precinct 207?

10 A Yes. That is --

11 JUDGE PAYNE: Point to 207 on the map and your  
12 little thing will come up indicting what you're talking  
13 about. Put a checkmark, a little, small checkmark. Do  
14 you see that?

15 THE WITNESS: Can you see that? I tried to do a  
16 check. I'm not sure.

17 JUDGE PAYNE: That little red mark. Is that it?

18 THE WITNESS: Yes.

19 JUDGE PAYNE: Okay.

20 A So that is a highly densely populated portion of The  
21 Fan that is almost exclusively -- I'd say probably  
22 98 percent or so -- white and very democratic and was a  
23 high turnout precinct traditionally. It still is.

24 Q Prior to 2011, how long had that precinct been in the  
25 71st House District?

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1 A At least 20 years.

2 Q And which district was it moved to?

3 A Sixty-eight.

4 Q And who represents District 68?

5 A Manoli Loupassi.

6 Q Is he a democrat?

7 A No.

8 Q Did you discuss the movement of 208 with Delegate  
9 Loupassi at any time?

10 A Yes.

11 Q Can you describe that conversation?

12 A Yes. I -- first, can I -- can I put that  
13 conversation in context first?

14 Q Sure.

15 A As I was using the map software to try to put 207  
16 back in the 71st District, because my goal was to keep as  
17 much of The Fan together in the 71st as possible, no  
18 matter how I sliced that precinct, it pushed the BVAP  
19 below 55 percent if I also tried to keep Churchill united.  
20 And so I became resigned to the notion that I would have  
21 to give up part of The Fan.

22 So I went to Delegate Loupassi and said, You have to  
23 pick up part of The Fan. Do you have a preference as to  
24 what you pick up? His response was --

25 MS. MCKNIGHT: Objection, Your Honor. We'd just

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1 ask her to tread with care here. We're approaching a  
2 hearsay objection, a hearsay issue with a witness who is  
3 in the courtroom with us and is not testifying.

4 JUDGE PAYNE: Not approaching it. The  
5 question -- that's the problem with "let me set the  
6 context" questions because there's no control over it,  
7 ruling on a question by question basis and an answer by  
8 answer basis, but it's hearsay.

9 MS. BRANCH: Yes, Your Honor. I would offer  
10 that it's not being offered for the truth of the matter.

11 JUDGE PAYNE: Why are you offering it?

12 MS. BRANCH: That it's being offered to impeach  
13 Delegate Jones. But I will -- I will rephrase the  
14 question to avoid hearsay.

15 Q Based on your conversation with Delegate Loupassi,  
16 did you have an understanding as to whether he wanted  
17 precinct 207 in his district?

18 A Yes.

19 Q And what was that understanding?

20 A He didn't want it unless he had to have it.

21 JUDGE PAYNE: What's the difference between that  
22 and hearsay?

23 MS. BRANCH: Well, I think it's based on --

24 JUDGE PAYNE: -- hearsay. So let's see if we  
25 can -- why are you offering it? You say to impeach

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1 Delegate Jones.

2 MS. BRANCH: Defendant-intervenors have offered  
3 that Delegate Jones has said that he -- that Delegate  
4 Loupassi wanted -- affirmatively asked for precinct 207 to  
5 be in his district, and Senator McClellan has a different  
6 recollection of that conversation.

7 JUDGE PAYNE: Well, was she a member of the  
8 conversation in which Delegate Jones asked Loupassi that?

9 MS. BRANCH: No, I don't think she was, Your  
10 Honor. But she did have conversation with Delegate  
11 Loupassi about precinct 207 that I think is directly  
12 relevant here.

13 JUDGE PAYNE: I'm not sure it is at this stage.  
14 You can call her back, perhaps, after Delegate Jones  
15 testifies and you set the framework, but right now, I  
16 think you're beyond the bound.

17 MS. BRANCH: Thank you, Your Honor.

18 Q Did you want to lose precinct 207, Senator McClellan?

19 A No.

20 Q Did you have a choice?

21 A No, not if I wanted --

22 JUDGE PAYNE: Did she feel like she had a  
23 choice? Is that your question?

24 MS. BRANCH: Sure.

25 A I felt that I didn't because --

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1 JUDGE PAYNE: That's enough.

2 THE WITNESS: Okay.

3 A No, I thought I didn't have a choice.

4 JUDGE PAYNE: If she wants to know why, she can  
5 ask why.

6 THE WITNESS: Okay.

7 JUDGE PAYNE: And then we'll --

8 Q And why is that?

9 JUDGE PAYNE: It will keep the conversation  
10 shorter and the examination smoother if you take it  
11 question by question and move it along that way.

12 MS. BRANCH: Yes, Your Honor.

13 JUDGE PAYNE: Yes, ma'am.

14 Q Why did you feel like you didn't have a choice?

15 A Because every time I tried to draw a map that  
16 included either all of 207 or a portion of 207, it pushed  
17 my district's black voting age population below  
18 55 percent, and I did not believe that any recommendation  
19 to Delegate Jones that resulted in my district falling  
20 below 55 percent would be accepted by him.

21 Q Were Summit Court, Hilliard and Stratford Hall  
22 removed from your district?

23 A Yes.

24 Q Where are those areas located?

25 A Right here. So it's the northwest portion of the

McClellan - Direct

1 district that's in white hashmarks.

2 Q What county are they in?

3 A Henrico.

4 Q And what is the racial composition of those areas?

5 A They predominately white.

6 Q Did you ever try to move those areas back into your  
7 district like you did with precinct 207?

8 A No.

9 Q And why not?

10 A Because it would have been counterproductive to my  
11 goal to keep 207, because if I brought those three  
12 precincts back in, it would push the black voting age  
13 population down. And I've continued to try to keep as  
14 much of 207, and frankly 208, as I could. I was able to  
15 keep 208 in the final map. But if I had tried to bring  
16 Summit Court, Stratford Hall and Hilliard back in the  
17 district, that would have affected the black voting age  
18 population if I kept 208.

19 Q And did removing precinct 207 from your district  
20 split The Fan neighborhood?

21 A Yes.

22 Q Was precinct --

23 JUDGE PAYNE: Excuse me. Did you do any  
24 calculation as to what the black voting age populations  
25 were if you made the changes you're talking about as to



McClellan - Direct

1 207 and the three areas in Henrico? You said it would  
2 push it down. My question is do you recall how much it  
3 would have pushed it down?

4 THE WITNESS: I don't recall how much, because  
5 once it fell below -- once it fell below, I believed it  
6 wouldn't be accepted. So I don't remember exactly how  
7 far, but it was below 55 percent.

8 BY MS. BRANCH:

9 Q Was precinct 505 partially removed from your  
10 district?

11 A Yes.

12 Q And how was it split?

13 A You see the blue line that's sort of a straight line  
14 here and then there's like a little triangle. The part  
15 that was removed that's the white hashmarks is mostly the  
16 Oregon Hill neighborhood, and the yellow part at the top  
17 is mostly VCU, or is VCU, is a part of VCU. The little  
18 white triangle is not really a residential area. It's  
19 part of the bridge and the -- the war memorial.

20 Q Was the racial composition included in your district  
21 and precinct 505 higher than the racial composition that  
22 was excluded?

23 A I'm not sure I understand your question.

24 Q Were you concerned at all about the precinct 505  
25 split?

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1 A I can't answer that with a yes or no because when the  
2 map was originally introduced, 505 was split, and there  
3 were attempts to reunite it and put it in the 69th  
4 District, but that would have affected -- and now I can't  
5 remember. I think -- it would have affected Betsy Carr's  
6 black voting age population if all of -- and the  
7 population deviation if all of 505 went in 69. And so we  
8 tried to find -- if it's going to be split, let's find a  
9 logical place for it to be split.

10 So the way it was finally split in map as signed by  
11 the governor in 5005 was actually suggested by Delegate  
12 Carr and myself. So I don't remember exactly where the  
13 line was in the map as originally introduced, but we did  
14 attempt to keep 505 whole, and when we couldn't meet the  
15 target criteria, we just said, well, what's the most  
16 logical place to split it.

17 Q And there -- when you say "target criteria," what are  
18 you referencing there?

19 A The 55 percent black voting age population and the  
20 1 percent population deviation.

21 Q Shifting gears to the eastern side of your district,  
22 were precincts 701 and 702 added to your district?

23 A Yes.

24 Q And where are they located?

25 A They are the -- they are along the boundary between

McClellan - Direct

1 my district and Delegate McQuinn. I've drawn a red line  
2 on the screen. They are north of 707.

3 Q What's unique about those two precincts?

4 A They are densely populated; predominately, if not  
5 exclusively, African-American residential areas.

6 Q Did you discuss the addition of those two precincts  
7 with any other delegates?

8 A Yes.

9 Q Who?

10 A First with Delores McQuinn, who represented the 70th  
11 District. She had -- she -- she very much wanted to  
12 keep --

13 JUDGE PAYNE: That's a -- I think it's a good  
14 point to make the point that the question is did you  
15 discuss. The answer is yes.

16 A Yes.

17 JUDGE PAYNE: If he wants to ask something  
18 further, she can ask it. Then the question can be framed.  
19 And if there's an objection, we'll have a basis for the  
20 objection. If there's not, then we will go on. So if you  
21 take hold of the examination, and I think it will move  
22 better that way if you do that. Rather than -- we're  
23 having a lot of answers that drag on and on and aren't  
24 really responsive to the questions that are being asked,  
25 and some of them are helpful information. Some of it's

McClellan - Direct

1 not particularly helpful. So if you'd take hold, I would  
2 appreciate it.

3 MS. BRANCH: Thank you, Your Honor.

4 Q What was Delegate McQuinn's position on the issue of  
5 adding precincts 701 and 702 to your district?

6 A She wanted to --

7 MS. MCKNIGHT: Objection, Your Honor. Hearsay.  
8 We understand plaintiffs intend to offer Delegate McQuinn.  
9 So they may elicit testimony directly from her.

10 JUDGE PAYNE: What's your response to the  
11 hearsay objection?

12 MS. BRANCH: I'm asking Delegate -- or Senator  
13 McClellan what her understanding was based on their  
14 conversation.

15 JUDGE PAYNE: I understand that, but it's still  
16 hearsay.

17 MS. BRANCH: I'll rephrase, Your Honor.

18 JUDGE PAYNE: All right.

19 MS. BRANCH: Thank you.

20 Q Did you try to draw your district in a way that would  
21 not have included 701 and 702?

22 A Yes.

23 Q And what was the effect of that?

24 A It pushed my black voting age population below  
25 55 percent.

McClellan - Direct

1 Q Did Delegate McQuinn used to represent precinct 701  
2 and 702 in any capacity?

3 A Yes.

4 Q And in what capacity was that?

5 A As a delegate, as a city council member and as a  
6 school board member.

7 Q Let's now turn our attention to the Ratcliffe VTD.  
8 Was that added to your district?

9 A Yes.

10 Q And where is Ratcliffe located?

11 A Ratcliff is the northeast corner of the district. I  
12 drew a red line there. And it is next to Central Gardens  
13 and precinct 604.

14 Q And what county is it in?

15 A Henrico.

16 Q What's the racial composition of Ratcliff?

17 A Predominately black.

18 Q Is there a difference between the Henrico area --  
19 Henrico County areas that were moved out of your district?  
20 That's Summit Court, Stratford Hall and Hilliard and  
21 Ratcliffe, which was added into your district?

22 A Yes.

23 Q And what's that difference?

24 A Ratcliff is predominately black. Summit Court,  
25 Stratford Hall and Hilliard are predominately white.

McClellan - Direct

1 Q Would you describe the difference between the racial  
2 populations in those two areas as stark?

3 A Yes.

4 Q Finally, where is precinct 204 located?

5 A 204 -- I just drew a red line through -- is on the  
6 west side of the district.

7 Q And it was added to your district, correct?

8 A Yes.

9 Q What's the racial composition of that precinct?

10 A Predominately white.

11 Q And you testified earlier that you felt you couldn't  
12 keep precinct 207 in your district. Is there a difference  
13 between precincts 207 and 204?

14 A Yes.

15 Q And what's that difference?

16 A 207 is a highly dense residential neighborhood, The  
17 Fan. 204 is not densely populated with residents. It --  
18 there is one street that is part of The Fan, Monument  
19 Avenue, that makes up part of that precinct. There is --

20 JUDGE PAYNE: Where is 204?

21 THE WITNESS: 204 is --

22 JUDGE PAYNE: What are the boundary streets?  
23 Excuse me. I didn't ask that very clearly.

24 THE WITNESS: Okay. So you see in 208 where  
25 there's a little star. If you go straightly west, that

McClellan - Direct

1 red line is Park Avenue. And it goes to -- this is the  
2 Boulevard. This is Broad Street. I believe this is  
3 Cleland maybe.

4 JUDGE PAYNE: Cleveland?

5 THE WITNESS: I think it's Cleland. It's either  
6 Cleveland or Cleland.

7 JUDGE PAYNE: Is it near Patterson, near the  
8 museum? There is a Cleland Avenue, but I don't think it's  
9 in that area.

10 THE WITNESS: Well, this is all closer to Broad  
11 Street. So the southern street is Park, up to the  
12 Boulevard and as you go north, you have Grace and Broad,  
13 and it goes beyond the Boulevard if you're on Broad.

14 JUDGE PAYNE: To what street?

15 THE WITNESS: Well, do you know -- I can't  
16 remember the name of the street, but there's the big  
17 building where Doug Wilder wanted to move the school board  
18 that's right next to --

19 JUDGE PAYNE: Atlantic Coastline -- old Atlantic  
20 Coastline Railroad?

21 THE WITNESS: I think so. It's --

22 JUDGE PAYNE: Apartments 3600?

23 THE WITNESS: Yes. Yes. Yes. Yes.

24 JUDGE PAYNE: That's all -- that is all -- I'm  
25 concerned because all of that -- about your testimony

McClellan - Direct

1 because, I mean, I'm confused by it. Because from  
2 Monument to Park out beyond Boulevard and up that way  
3 seems to me to be fairly heavily populated --

4 THE WITNESS: Well, in --

5 JUDGE PAYNE: -- if you pick up all that area of  
6 that little tip over there that goes all the way to Broad  
7 Street.

8 THE WITNESS: But it's not as heavily populated  
9 as 207. And that -- the question --

10 JUDGE PAYNE: Oh, I see.

11 THE WITNESS: -- was the difference between 207  
12 and 204. And so while 204 is populated, it does not have  
13 as many people or voting age population as 207.

14 Q Senator, if we take a step back and look at the  
15 voters who moved into your district and out of your  
16 district, are there any patterns?

17 A Yes.

18 Q How would you describe them?

19 A The precincts -- with one exception, which I'll come  
20 back to in a minute, precincts 207, Summit Court,  
21 Hilliard, Stratford Hall, the part of 505 that was moved  
22 out are predominately white, residential, densely  
23 populated areas. Precinct 301 was, I would say, a  
24 like-for-like swap with 604. And the 702, 701, the part  
25 of 703, Ratcliffe, were heavily densely populated black



McClellan - Direct

1 neighborhoods. So I shifted east, lost white population  
2 and picked up black population.

3 Q Let me direct your attention to Plaintiffs' Exhibit  
4 30.

5 A Is there a way to get the -- okay. Thank you.

6 Q Do you remember -- do you recognize this e-mail  
7 string?

8 A Yes.

9 Q And do you remember testifying about it at the last  
10 trial?

11 A Yes.

12 Q What is it about, briefly?

13 A The string, in its entirety -- Kirk Showalter is the  
14 voter registrar for the City of Richmond. Larry Haake is  
15 the voting registrar for Chesterfield County.

16 Kirk reached out to me, on behalf on both of them, to  
17 raise concerns about split precincts in Richmond and  
18 Chesterfield. And we attempted to draw maps that reunited  
19 the split precincts identified by those two individuals.  
20 And we -- so that's, I think, the beginning of the string  
21 that you can't see on the screen, or at least the  
22 beginning of the e-mail correspondence.

23 Okay. So it's not this document, but that was the  
24 beginning of the e-mail correspondence.

25 This e-mail is -- and we are talking about House Bill

McClellan - Direct

1 5001. We had made a change that was not included in  
2 House -- in 5001 as it passed the House, and Kirk  
3 Showalter was asking me why not. And I asked Delegate  
4 Jones and Kent Stigall why not and relayed the reason they  
5 gave me back to Kirk Showalter. And I think she's trying  
6 to figure out how to reunite the precincts. And the  
7 reason the change was not accepted is in the e-mail.

8 Q And what was that reason?

9 A Because the -- this change in particular she was  
10 asking about pushed the black voting age population in the  
11 71st District to 54.8 percent.

12 Q And you testified that this e-mail exchange was about  
13 the House Bill that preceded the final map, which is House  
14 Bill 5001; is that right?

15 A Yes.

16 Q And were all the precinct splits in your district  
17 fixed in the final map in House Bill 5005?

18 A No.

19 Q Which ones were still split?

20 A If we go back to the prior document, or if I can  
21 remember off the top of my head, 505, 703 -- yeah. Okay.  
22 Thank you.

23 505, 703 are still split. And then that e-mail was  
24 not just about splits in my district. So there were  
25 precincts in other districts that remained.

McClellan - Direct

1 Q Did you vote for House Bill 5005?

2 A Yes.

3 Q Why?

4 A There is a -- an expectation in the House of  
5 Delegates that I think goes back to Jefferson or Mason or  
6 somebody; if you offer amendments to a bill, you are  
7 expected to vote for it. And I believed that having  
8 offered suggestions that were accepted, even though they  
9 all weren't, if I did not vote for House Bill 5005, as a  
10 member of the minority party, I would not be able to have  
11 an influence on legislation going forward, particularly  
12 legislation sponsored by Delegate Jones or any other  
13 member of the majority party.

14 Q Shifting gears to talk briefly about your election  
15 history. Did you win every election you ran in to  
16 represent the 71st District?

17 A Yes.

18 Q Were any of your House elections close?

19 A No.

20 Q What was the closest election you had?

21 A My initial primary. I won with 65 percent of the  
22 vote.

23 Q And the rest of the margins in all of your subsequent  
24 election history were bigger --

25 A Yes.

McClellan - Direct

1 Q -- is that right?

2 A Yes.

3 Q How long has the 71st District being represented by  
4 an African-American delegate?

5 A Since Virginia went to single member districts.

6 Q And do you know who that first delegate was?

7 A Benjamin Lambert.

8 Q Senator, did you receive electoral support from white  
9 voters when you represented the 71st District?

10 A Yes.

11 Q And have white voters in the 71st District voted for  
12 black candidates other than yourself?

13 A Yes.

14 Q Who?

15 A Kim Gray, who is now the city council member for the  
16 2nd council district, which is all of the 200 precincts in  
17 the 71st. She was also elected to the school board.

18 JUDGE PAYNE: I think the question was who, and  
19 I think the answer would be sufficient to give the names,  
20 if you don't mind.

21 A Okay. Kim Gray, Jeff Bourne, Viola Baskerville,  
22 Cynthia Newbille, Ellen Robertson, Barack Obama.

23 Q That's good. Thank you.

24 A Okay.

25 Q If Delegate Tyler thought that her district, House

McClellan - Direct

1 District 75, needed a black voting age population of  
2 55 percent in order to preserve the ability to elect,  
3 would you take that to mean that District 71 also needed a  
4 55 percent black voting age population?

5 A No.

6 Q Are you familiar with Delegate Tyler's district at  
7 all?

8 A Yes.

9 Q And is your district different from her district?

10 A Yes.

11 Q How so?

12 A Her district is more rural, has more prisons. So it  
13 has a large population of people who cannot vote. Mine,  
14 or the 71st, is urban, very densely populated. I think  
15 that's the biggest difference.

16 Q What's the partisan composition of your former  
17 district?

18 A It is very democratic. It was and is the most  
19 democratic district in the state when you look at the  
20 democratic performance index.

21 Q Does House District 71 have a significant student  
22 population?

23 A Yes.

24 Q Does it have a significant retiree population?

25 A Yes.

McClellan - Direct

1 Q Are House Districts 71 and 75 even remotely similar?

2 A No.

3 Q There are significant differences between the two?

4 A Yes.

5 Q Did you ever express a concern to Delegate Jones or  
6 anyone else about the black voting age population in your  
7 district falling too low?

8 A No.

9 Q Did you ever express a concern to Delegate Jones or  
10 anyone else about the black voting age population falling  
11 too low in any other majority black district?

12 A No.

13 Q Did you have that concern at all?

14 A No.

15 Q Was a black -- a 55 percent black voting age  
16 population needed for to you win reelection in the 71st?

17 A No.

18 Q Did you ever express a view that a certain percentage  
19 of black voters was needed in your district or in any  
20 other majority/minority district in order for minority  
21 voters to be able to elect their candidate of choice?

22 A No.

23 MS. BRANCH: No further questions. Thank you.

24 JUDGE PAYNE: Cross-examination.

25 MS. MCKNIGHT: Good morning, Your Honors.

McClellan - Cross

**CROSS-EXAMINATION**

1  
2 BY MS. MCKNIGHT:

3 Q Good morning, Senator McClellan.

4 MS. MCKNIGHT: Brief point of just an  
5 administrative issue. I think we need something switched.  
6 Okay.

7 Q Good morning, Senator McClellan.

8 A Good morning.

9 Q We represent defendant-intervenors. I'm going to ask  
10 you some questions today about your testimony earlier  
11 today and about your district. The last we spoke was in  
12 2015 trial so it's nice to see you, but I'm going to try  
13 to keep this brief.

14 A Thank you.

15 Q First, I'll ask to have Defendant-Intervenors'  
16 Exhibit 94, page 4 put up on the display. This should  
17 look familiar. You were just testifying about this map.

18 A Yes.

19 Q Now, I'd like to start by drawing your attention to  
20 precincts 604 and 603.

21 A Okay.

22 Q And I believe I may be able to draw a dot there so at  
23 least folks can see. We're talking about 604 and 603.

24 Now, it appears from the map that prior to redrawing,  
25 district 603 was in your district but 604 was not; is that

McClellan - Cross

1 right?

2 A Yes.

3 Q And, now, you testified in deposition that uniting  
4 603 and 604 made sense because of similar demographics.  
5 Is that fair?

6 A Yes.

7 Q And now I'd like to draw your attention to precinct  
8 or District 703. Let me clear my dots.

9 A Okay.

10 Q Now, you had testified earlier about a split in that  
11 precinct?

12 A Yes.

13 Q Now, I understood from your deposition testimony that  
14 you testified that the split is a natural boundary between  
15 communities of interest. Is that fair?

16 A Yes.

17 Q Still on District 703. I understood in your  
18 deposition that testified that Delegate McQuinn had a home  
19 in 703. Is it fair to say that the asterisk next to  
20 Delores L. McQuinn indicates her home in that district?

21 A It is her home, but I -- I believe she actually lives  
22 in 705.

23 Q Okay.

24 JUDGE PAYNE: You're talking about now or do you  
25 mean at the time?



McClellan - Cross

1 THE WITNESS: Both.

2 JUDGE PAYNE: What?

3 THE WITNESS: Both.

4 JUDGE PAYNE: So you say she never lived in 703?

5 THE WITNESS: She lives in the House that is  
6 that dot, and my understanding is that dot is actually in  
7 705 and not 703.

8 JUDGE PAYNE: You mean the thing that's a star?

9 THE WITNESS: The star, yes. It's kind of on  
10 the border, but --

11 JUDGE PAYNE: It's split between the two or it  
12 is all in one or all in the other?

13 THE WITNESS: Her house is on the border between  
14 703 and 705, but my understanding is the house itself is  
15 in 705.

16 Q And you testified at deposition in August in this  
17 matter that her home was in 703; is that right?

18 A I don't -- if you'd like to show me my transcript, I  
19 don't remember if I said 703 or 705.

20 JUDGE PAYNE: Show her the transcript.

21 MS. MCKNIGHT: Could we put it up on the screen  
22 for her to view? That may be easiest.

23 JUDGE PAYNE: Sure. As long as she can see it  
24 and it contains the question and the answer. If it's  
25 something incomplete or you need to see more, just say so.

McClellan - Cross

1 THE WITNESS: Thank you.

2 MS. MCKNIGHT: Thank you, Your Honor.

3 JUDGE PAYNE: Will you put it up?

4 MS. MCKNIGHT: This is page 17 of her August  
5 deposition. I mean, pardon me. Page 47 of her  
6 August 2017 deposition.

7 JUDGE PAYNE: Can you bracket that so we can  
8 read it and enlarge the question and answer you're talking  
9 about, please, ma'am?

10 MS. MCKNIGHT: Could you enlarge the lower half  
11 of page 47?

12 Q And lines -- Delegate -- pardon me. Senator  
13 McClellan, would you review lines 18 through 22, please?

14 A Actually, can you go back up?

15 Q Sure.

16 A And can I see more than this, because --

17 JUDGE PAYNE: How far -- do you need to go --

18 A So on line 9, I say she lives in 705. And that is  
19 and has always been my understanding, because 705 is part  
20 of Churchill, and if she did not live in 705, we would  
21 have attempted to put 705 in the 71st District.

22 So yes, down below, I say 703, but I misspoke there.

23 Q I understand. Okay. Thank you for clearing it up.

24 Okay. Now we can go back to Plaintiffs' Exhibit 94,  
25 page 4. Now, moving south along your district to district

McClellan - Cross

1 505 --

2 A Yes.

3 JUDGE PAYNE: You said 505?

4 MS. MCKNIGHT: Correct. Precinct 505. Pardon  
5 me, Your Honor. I've put a red dot under it just for  
6 everyone's reference.

7 Q Earlier you testified that you and Betsy Carr  
8 suggested the split in 505. Did you mean to say that you  
9 suggested it to Delegate Jones?

10 A Yes.

11 Q And did Delegate Jones ever tell you that 505 could  
12 not be placed entirely in Betsy Carr's district?

13 A No, because the map we presented to him did not  
14 include 505 in all of one district or the other because  
15 when we drew a map that included 505 in one district or  
16 the other, it affected the black voting age population.  
17 So I never offered that as a suggestion to Delegate Jones  
18 that I can recall.

19 Q Moving back east in your district for a moment. You  
20 were discussing with Ms. Branch precinct -- a split in  
21 707 -- I'm going to put a red dot under it for your  
22 reference.

23 A Yes.

24 Q You were describing a split in 707 and a split in  
25 Churchill, a division along Broad Street?

McClellan - Cross

1 A Yes.

2 Q And did you tell Delegate Jones that that split  
3 needed to be fixed?

4 A Yes.

5 Q Okay. And did he fix it?

6 A Yes.

7 Q Okay. Going west in your district back to precinct  
8 208. I placed a dot under it for everyone's reference.  
9 You discussed with Ms. Branch that there was a split in  
10 208 --

11 A Yes.

12 Q -- in HB 5001?

13 A Yes.

14 Q And did you tell Delegate Jones you wanted that split  
15 to be fixed?

16 A Yes.

17 Q And did he fix it?

18 A Yes.

19 Q You testified about precinct 207. Did you ever go to  
20 Delegate Jones and give him a proposed map that included  
21 precinct 207 in HD 71?

22 A I don't believe so, because every map that I drew  
23 that included 207, either in whole or in part, pushed the  
24 black voting age population of the 71st District over 55.  
25 So I knew he wouldn't accept it, and I did not offer,

McClellan - Cross

1 knowingly, any recommendations that he would not accept.

2 JUDGE ALLEN: And how many recommendations did  
3 you give him, approximately, that you knew that he  
4 wouldn't accept?

5 THE WITNESS: I did not give him any that I did  
6 not think he would accept.

7 JUDGE ALLEN: Right. So how many did you not  
8 give him?

9 THE WITNESS: Oh. A lot. So I sat in the  
10 legislative services with the software and drew several --  
11 I don't know the number, but it was a lot of different  
12 versions of the boundaries to try to keep as many  
13 neighborhoods together to address concerns that Delegate  
14 McQuinn and Delegate Carr and the two voter registrars  
15 brought to my attention to see if we could address all of  
16 those concerns. And with one exception, I did not show  
17 either Delegate Jones or Kent Stigall, who was the  
18 legislative services person working with him, I did not  
19 give them a map that I -- that did not meet the 55 percent  
20 black voting age population. And the exception was a  
21 mistake.

22 MS. MCKNIGHT: Thank you, Your Honor.

23 JUDGE ALLEN: Excuse me.

24 MS. MCKNIGHT: Thank you, Your Honor.

25 Q Now, going into the 2011 redrawing process, the

McClellan - Cross

1 neighborhood called The Fan was split three ways, wasn't  
2 it?

3 A Yes.

4 Q And going out of the 2011 redrawing process, it was  
5 split three ways, wasn't it?

6 A A very different three ways.

7 Q Okay. Now, Senator McClellan, I appreciate I may be  
8 testing your memory a bit here. I'm going to be asking  
9 you a question about deposition testimony that you gave in  
10 this case in 2015.

11 A The deposition was in 2015?

12 Q Correct.

13 A Okay. I would appreciate it if you show me  
14 transcript pages when you ask your question.

15 JUDGE PAYNE: The technique actually doesn't do  
16 that. That's not how it it's done. The question is you  
17 ask the question. She gives an answer.

18 THE WITNESS: Okay.

19 JUDGE PAYNE: If the answer that she gives is  
20 inconsistent, then you show her the page and you say, In  
21 2015, you were asked this question and you gave this  
22 answer; is that correct? And then we have -- and remember  
23 the fundamental rule; if you touch the king, you must kill  
24 him. That means it needs to be impeachment so that we  
25 don't waste time. Okay. That's just -- so she's going to

McClellan - Cross

1 ask you a question. You just give the answer. If she  
2 thinks that you gave an inconsistent answer in 2015,  
3 she'll show you the deposition page and ask you did you  
4 say that then.

5 THE WITNESS: Okay.

6 JUDGE PAYNE: Okay?

7 THE WITNESS: Thank you.

8 Q Senator McClellan --

9 A Yes.

10 Q -- to determine who the candidate of choice was of  
11 the majority of the minority community in your district,  
12 you would probably have to look at results from primary  
13 elections. Is that fair to say?

14 A I'm sorry. Can you repeat that question?

15 Q Absolutely. In order to determine who the candidate  
16 of choice was of the majority of the minority community in  
17 your district, you would probably have to look at the  
18 results from primary elections; is that right?

19 A If you are talking about House of Delegate elections,  
20 yes. If you are talking about other elections, then not  
21 necessarily.

22 Q Senator McClellan, did you ever tell Delegate Jones  
23 that you did not think HD 71 needed 55 percent BVAP to be  
24 a performing majority/minority district?

25 A I don't believe so, because I -- when I was told it

McClellan - Cross

1 had to meet 55 percent, I didn't argue.

2 Q And did you ever provide Delegate Jones any analysis  
3 showing that HD 71 did not have racially polarized voting?

4 A He didn't ask for one.

5 JUDGE PAYNE: Excuse me. Senator McClellan,  
6 there's a question on the table and then -- and the answer  
7 was did he ask for it or not. Yes or no.

8 THE WITNESS: Okay.

9 JUDGE PAYNE: So that's a yes or no answer. And  
10 we -- embellishment simply extends the examination. If a  
11 lawyer wants to know more, they'll ask, and if the  
12 cross-examining -- your lawyer sponsoring your testimony  
13 wants to ask more, they'll do it.

14 THE WITNESS: Okay.

15 JUDGE PAYNE: You don't need to augment it and  
16 advocate.

17 THE WITNESS: Okay. I'm not used to being on  
18 this side so I apologize.

19 JUDGE PAYNE: You're used to questioning. Not  
20 answering.

21 THE WITNESS: Yes.

22 Q So I'll ask again, Senator McClellan. Did you  
23 provide Delegate Jones any analysis showing that HD 71 did  
24 not have racially polarized voting?

25 A No.



McClellan - Redirect

1 Q And, Senator McClellan, at the time you were a  
2 delegate representing HD 71, you voted for the plan as  
3 enacted HB 5005; isn't that right?

4 A Yes.

5 MS. MCKNIGHT: Thank you very much for your  
6 time.

7 JUDGE PAYNE: Any redirect?

8 MS. BRANCH: Yes, Your Honor.

9 **REDIRECT EXAMINATION**

10 BY MS. BRANCH:

11 Q Senator McClellan, you were asked on cross about  
12 whether you proposed -- or whether you gave Delegate Jones  
13 any maps that kept precinct 207 in the 71 District. And I  
14 think you said on cross that you did not because it would  
15 have brought the BVAP above 55 percent. Did you mean to  
16 say under in 55 percent?

17 A I meant to say under, yes.

18 Q Thank you. When -- you testified on cross that you  
19 didn't argue with Delegate Jones about the 55 percent  
20 black voting age population threshold. Why not?

21 A It wouldn't have done any good. I was clearly told,  
22 If you meet these two criteria, I will be open to  
23 suggestions. I took that to mean if I made suggestions  
24 that did not meet 1 percent population deviation and  
25 55 percent black voting age population, he wouldn't be

McClellan - Redirect

1 open to it. I didn't want to waste my time arguing over  
2 something that had already been decided.

3 Q And was it your experience that when a map was  
4 proposed that had your district at below 55 percent black  
5 voting age population, it was not accepted?

6 A Correct.

7 Q Did Delegate Jones ask you for any racially polarized  
8 voting analysis at any time during the process?

9 A No.

10 MS. BRANCH: No further questions. Thank you.

11 JUDGE PAYNE: Can she be permanently excused or  
12 do you wish to recall her?

13 MS. BRANCH: We wish to reserve the right to  
14 recall her.

15 JUDGE PAYNE: Well, then she needs -- is she  
16 under subpoena or do you have her here by compulsion  
17 or what? How do we deal with that?

18 MS. BRANCH: She is under subpoena, I believe.

19 JUDGE PAYNE: All right. Then you are not  
20 released from your subpoena. May she be excused  
21 temporarily until you give her notice so she can go about  
22 her business?

23 MS. BRANCH: Yes, Your Honor.

24 JUDGE PAYNE: Knowing that the onus of getting  
25 ahold of her in time is on you, and if you don't do it,

McClellan - Redirect

1 that's just the way things are.

2 MS. BRANCH: Yes, Your Honor.

3 THE WITNESS: I'll be across the street, Your  
4 Honor.

5 JUDGE PAYNE: Just give -- make sure they know  
6 to get ahold you you.

7 THE WITNESS: Yeah, they do. Thank you.

8 JUDGE PAYNE: More than you want.

9 THE WITNESS: Thank you.

10 (Witness stood aside.)

11 MS. KHANNA: Your Honor, plaintiffs would like  
12 to call Delegate Matthew James to the stand.

13 JUDGE PAYNE: You, I hope, were listening, and  
14 the witness was listening, about the previous admonitions.

15 Testimony is best presented by a question, a direct  
16 answer and a follow-up, and then we don't get into  
17 rambling and then having to cure errors that occur because  
18 there is an extensive narrative. And I'm asking you to  
19 take the lead in that situation, even if you need to cut  
20 the witness off and say all right, let me follow up or  
21 whatever.

22 MS. KHANNA: Yes, Your Honor. Thank you.

23 JUDGE PAYNE: Because you know what's  
24 permissible and what's not. They don't always know.

25 MS. KHANNA: Yes, Your Honor.

James - Direct

1 JUDGE PAYNE: Come up and be sworn, sir.

2 MATTHEW JAMES,

3 called at the instance of the plaintiffs, having been  
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. KHANNA:

7 Q Good morning, Delegate James.

8 A Good morning.

9 Q Could you please state your name for the record and  
10 spell your last name?

11 A Matthew James. J-A-M-E-S.

12 Q Are you currently a delegate with the Commonwealth of  
13 Virginia?

14 A Yes, I am.

15 Q And what district do you represent?

16 A I represent the 80th District.

17 Q And where did you attend high school?

18 A Indian River High School in Chesapeake, Virginia.

19 Q And where did you attend college?

20 A I spent some time at the Naval Academy in Annapolis,  
21 Hampton University in Hampton.

22 Q And did you attend graduate school as well?

23 A Yes. I attended Northwestern University, Kellogg  
24 School of Management, where I received my MBA.

25 Q What is your current occupation other than as a

James - Direct

1 delegate?

2 A I run a seven city/county economic development  
3 organization. We do the workforce development and  
4 business expansion for the cities of Hampton, Newport  
5 News, James City County, Gloucester, Poquoson, York and  
6 Williamsburg.

7 Q And what is your role there?

8 A I'm the president and CEO of that organization.

9 Q How long have you been in that role?

10 A Twelve years.

11 Q When did you first run for elected office?

12 A I ran in 2009.

13 Q And what district was that?

14 A For the 80th District.

15 Q What is your party affiliation?

16 A I'm a democrat.

17 Q Was there a democratic primary in 2009?

18 A Yes. We had a three party race.

19 Q Do you recall who your opponents were?

20 A Yes. My opponent was a sitting city council person,  
21 Doug Smith, and the civic league person, Buddy Sharp, of  
22 the largest civic league in my district.

23 Q And I take it that you won that three party primary?

24 A Yes.

25 Q Or that three candidate primary?

James - Direct

1 A Yes. I won with a vote total of a little south of  
2 50 percent.

3 Q Did you run in a contested general election in 2009?

4 A Yes, I did.

5 Q And who was your opponent then?

6 A My opponent was Jennifer Lee.

7 Q Was she a republican?

8 A She was a republican.

9 Q Do you recall approximately how much of the vote you  
10 won?

11 A I believe I won around 68 percent of the vote.

12 Q Have you participated in a democratic primary since  
13 2009?

14 A No, I have not.

15 Q Have you run in a contested election since 2009?

16 A No, I have not.

17 Q Delegate James, do you recall that in the first half  
18 of 2011, the House of Delegates took up the process of  
19 redistricting?

20 A Yes, I do.

21 Q And you were a freshman delegate at that time?

22 A Yes.

23 Q Do you know who was responsible primarily for the  
24 2011 redistricting process for the House of Delegates?

25 A Rephrase the question.

James - Direct

1 Q Do you know which delegate was primarily responsible  
2 for the redistricting process in 2011?

3 A My observation was most of the conversations on the  
4 floor of the House were conducted by Delegate Jones.

5 Q Delegate James, I'll represent to you that Delegate  
6 Jones has testified before this Court that you had  
7 significant input into the drawing of your district. Is  
8 that correct? Did you have significant input the  
9 configuration of District 80?

10 A As I testified in the deposition, most of my  
11 conversations were with Delegate Spruill.

12 Q Did you have significant --

13 JUDGE PAYNE: But the question was did you have  
14 significant input, even if it wasn't with Spruill -- I  
15 mean with Jones?

16 THE WITNESS: I apologize, sir.

17 JUDGE PAYNE: Do you think you did? Let's start  
18 again.

19 Q Would you like me to repeat that question?

20 A Please -- I'm sorry. I'm not -- this is my first  
21 time testifying so I'm a little nervous. I apologize.

22 Q Did you have significant input into the drawing of  
23 your district, District 80?

24 A No, not really.

25 Q Did you provide any input to Delegate Jones on how

James - Direct

1 your district should be configured?

2 A Not to Delegate Jones.

3 Q Did you tell Delegate Jones that you would like him  
4 to add any areas to your district?

5 A Not directly.

6 Q Did you tell him indirectly?

7 A No.

8 Q Did you tell Delegate Jones that you didn't want him  
9 to add areas from his district, District 76, to yours?

10 A No.

11 Q Did you express any issue -- any opinion on the issue  
12 to Delegate Jones?

13 A No.

14 Q Did you have any conversations with Delegate Jones  
15 about the number of black voters in your district?

16 A No, I did not.

17 Q Did you tell Delegate Jones that he should increase  
18 the black voting age population of your district?

19 A No, I did not.

20 Q Did you have any conversations with Delegate Jones  
21 about the configuration of District 80 prior to the  
22 enactment of HB 5005?

23 A Not to my recollection.

24 Q Did you have any conversations with Delegate Jones  
25 about the configuration of any other districts prior to



James - Direct

1 the enactment of HB 5005?

2 A No, I did not.

3 Q Did you ever have a one-on-one meeting with Delegate  
4 Jones about redistricting?

5 A No, I did not.

6 Q Did you discuss the 2011 redistricting process with  
7 anyone else prior to the enactment of the bill?

8 A As I said, my conversations were with Delegate  
9 Spruill.

10 Q And how many conversations are you referring to?

11 A Primarily one, based on my recollection.

12 Q And can you tell me the circumstances of that  
13 conversation?

14 A Basically he explained to me the process, and I  
15 basically said, as a freshman, I was proud and I'll serve  
16 whatever my district configuration works out to be.

17 Q And was that a formal meeting that was set up --

18 A No. It was a telephone call.

19 Q He had called you?

20 A Yes.

21 Q And do you recall approximately how long that  
22 telephone call lasted?

23 A Maybe 8 to 12 minutes.

24 Q Did you provide any input on the configuration of  
25 your district to Delegate Spruill during that phone

James - Direct

1 conversation?

2 A Not to my recollection, no.

3 Q Did he ask for your input?

4 A Not really. I'm sorry. No.

5 Q Did you discuss the configuration of your district,  
6 District 80, at all in the course of that conversation?

7 A The conversation we had was primarily process.

8 Q Did you discuss the 2011 redistricting process with  
9 anyone else --

10 A No.

11 Q -- prior to the enactment of HB 5005?

12 A Not to my recollection, no.

13 Q Delegate James, can you say with certainty whether  
14 you had any substantive conversations with anyone about  
15 the configuration of District 80 during the redistricting  
16 process?

17 A Rephrase the question, please.

18 Q You mentioned a few times that you don't recall --

19 JUDGE PAYNE: Do you know what that's called?  
20 Flagellating a dead equine. Let's go.

21 MS. KHANNA: I'll move on, Your Honor.

22 JUDGE PAYNE: I think the point has been made.

23 MS. KHANNA: Understood.

24 I'd like to please put on the screen

25 Defendant-Intervenors' Exhibit 94, page 10.

James - Direct

1 Q Delegate James, I'm showing you what has been marked  
2 as Exhibit 94 by defendant-intervenors. Have you seen  
3 this particular map before?

4 A Yes, I have.

5 Q And what is it?

6 A This is the map showing my prior configuration of 80  
7 before the redistricting and, in different colors, the new  
8 redistricting boundary lines.

9 Q So you understand how to read this map in terms of  
10 the various cross-hatching and colors?

11 A Yes, I do.

12 Q And I won't reiterate that for the Court as long as  
13 that's clear.

14 Were there changes made to District 80 during the  
15 2011 redistricting process?

16 A Yes.

17 Q Pretty substantial changes; is that right?

18 A They were significant. I don't know if they were  
19 substantial.

20 Q Do you know why any of these changes were made?

21 A It was my understanding, based on the conversation  
22 that I heard on the floor of the House and in caucus  
23 meetings, that this was done in order to satisfy the laws  
24 of the redistricting process.

25 Q Did you understand anything more than that?

James - Direct

1 A I wasn't involved in the redrawing of the lines very  
2 significantly. So I made the assumption that this was  
3 done in order that we had fair and equitable lines  
4 throughout the Commonwealth of Virginia.

5 Q Did you know at the time or did you have any other --  
6 any understanding, specific understanding, about why any  
7 specific changes were made?

8 A It was my understanding it was based on the census --

9 Q So --

10 A -- demographics.

11 Q So the question was did you know why any specific  
12 changes were made?

13 A No. I wasn't involved. I was not personally  
14 involved in any of those details.

15 Q And did you provide any input to anyone at any time  
16 suggesting any of these changes?

17 A No, I did not.

18 Q Delegate James, prior to the enactment of HB 5005,  
19 did you know what the black voting age population of your  
20 district was?

21 A No, I did not.

22 Q Prior to the enactment of HB 5005, did you know -- or  
23 did you have an understanding of precisely what the Voting  
24 Rights Act would have required of the configuration of  
25 your district?

James - Cross

1 A No, I did not.

2 Q Did you ever discuss with any delegates whether a  
3 55 percent black voting age population would be needed in  
4 your district?

5 A No, I did not.

6 Q Did you ever discuss with any delegates whether a  
7 55 percent black voting age population would be needed in  
8 any of the House of Delegates districts?

9 A No, I did not.

10 Q How did you vote on House Bill 5005?

11 A I approved it.

12 Q And why is that?

13 A My understanding was that this was what we had to do.  
14 It would satisfy the requirements. And my focus was to  
15 move forward and to reach out to my new constituents and  
16 help serve them as a delegate in the House of Delegates.

17 MS. KHANNA: Thank you, Delegate James. I have  
18 no further questions.

19 THE COURT: Cross-examination.

20 **CROSS-EXAMINATION**

21 BY MR. RAILE:

22 Q Good morning, Delegate James.

23 A Good morning.

24 Q I'm Richard Raile and I represent the  
25 intervenor-defendants, and I'll try to keep this brief.

James - Cross

1           You testified that you didn't have any discussions  
2 about the configuration of HD 80; is that right?

3       A       That is correct.

4           MR. RAILE: Can we put up Defendant-Intervenors'  
5 Exhibit 94, page 10?

6       Q       Did you see, during the redistricting process, any  
7 draft maps that moved District 80 west into the precincts  
8 of Silverwood, Churchland, Fellowship, Balley Creek, E.W.  
9 Chittum School or Jolliff Middle School? Did you ever see  
10 a version of a map that moved HD 80 into any of those  
11 precincts?

12      A       I don't recall seeing that draft.

13      Q       Am I correct that you do not have any reason to think  
14 that the drawing of HD 80 is racially discriminatory?

15      A       That is correct.

16           MR. RAILE: No further questions.

17           THE COURT: Any redirect?

18           MS. KHANNA: No, Your Honor.

19           (Witness stood aside.)

20           THE COURT: All right.

21           MS. BRANCH: We would call Algie Howell to the  
22 stand.

23           THE COURT: How long is that witness' testimony  
24 going to be, do you think?

25           MS. BRANCH: Approximately 15 minutes, Your

1 Honor.

2 THE COURT: How are you doing? Do you need to  
3 change court reporters now? I think we'll take a  
4 20-minute recess and change court reporters, then.

5 (Recess taken.)

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1                                   **ALGIE T. HOWELL, JR.,**

2       a witness, called at the instance of the plaintiff, having  
3       been first duly sworn, testified as follows:

4                                   DIRECT EXAMINATION

5       BY MS. BRANCH:

6       Q       Good morning, Mr. Howell.

7       A       Good morning.

8       Q       Can you please state your full name for the record.

9       A       Algie T. Howell, Jr.

10      Q       And can you spell your last name, please.

11      A       H-o-w-e-l-l.

12      Q       Where are you currently employed, Mr. Howell?

13      A       I'm currently retired.

14      Q       And did you once serve in the House of Delegates?

15      A       Yes, I did.

16      Q       When was that?

17      A       From 2003 to 2'14.

18      Q       To 2014?

19      A       Yes.

20      Q       Did you retire from the House in 2014?

21      A       No.

22      Q       What did you do after?

23      A       I resigned from the House of Delegates in order to be  
24      appointed to the parole board for the State of Virginia.

25      Q       What district did you represent in the House of Delegates?



Howell - Direct

81

1 A The 90th House District.

2 Q And where is that located?

3 A It's currently a part of Norfolk and Virginia Beach.

4 Q Are you a native Virginian?

5 A Yes, I am.

6 Q Where were you raised?

7 A In a little town called Holland, Virginia now a part of  
8 the City of Suffolk.

9 Q Are you a Democrat or Republican?

10 A I'm a Democrat.

11 Q When did you first run in an election for the House of  
12 Delegates?

13 A In 2003.

14 Q Have you run in any democratic contested primaries?

15 A No.

16 Q Have you run in any primaries where you had an opponent?

17 A Yes.

18 Q And were any of your primary election opponents white?

19 A Not in the primaries.

20 Q Were they all African American?

21 A Yes.

22 Q Were any of your primary elections close?

23 A No, they were not. They were all landslides.

24 Q What about your general elections, were those close at  
25 all?

1 A No, they were not.

2 Q How long has the 90th House District been represented by  
3 an African-American delegate?

4 A The best I can recall was back in the '60s when Dr.  
5 William P. Robinson for this seat, and he won that election.

6 Q What was your role in the 2011 redistricting, Mr. Howell?

7 A I did not have much of a role in the 2011 redistricting.

8 Q Were you a member of the six-person redistricting  
9 subcommittee?

10 A Yes, I was.

11 Q And what was your role in that committee?

12 A It was minimum. I didn't exactly have a role.

13 Q Did you ever draw any maps of any House districts, yours  
14 or others?

15 A No, I did not.

16 Q Did you ever discuss your district with Delegate Jones?

17 A On one occasion after I had seen the redistricting map and  
18 noticed that some of the areas that I had represented had been  
19 removed from the 90th District.

20 Q So you spoke with Delegate Jones after the map had already  
21 been drawn; is that correct?

22 A The best I can recall. That's the first time that I saw  
23 the map.

24 Q And did you ever talk to Delegate Jones prior to seeing a  
25 new map of your district?

1 A Not that I can recall.

2 Q Who initiated the conversation between you and Delegate  
3 Jones?

4 A I think I did after I saw the map, the redrawing, and I  
5 was very concerned about some areas that had been removed from  
6 the 90th. That's when we had a conversation.

7 Q How long did the conversation last?

8 A It wasn't very long.

9 Q Delegate Jones has testified that you had extensive input  
10 into the drawing of your district. Did you?

11 A No.

12 Q Did you have extensive input in the drawing of any House  
13 District?

14 A No.

15 Q Let's discuss the changes that were made to House  
16 District 90. You mentioned earlier that you had some concerns.  
17 What were those?

18 A There -- my major concern, I guess, was Norfolk State  
19 University which part of that was shifted over to the -- it was  
20 split over to the 89th District, and Union Chapel, a  
21 district -- well, an area that I had worked with those people  
22 since the early '60s in the civil rights movement. I knew most  
23 of them. They were very dedicated people, and also all of the  
24 areas in Chesapeake had been removed from my district.

25 Q Is Union Chapel predominantly black?

1 A Yes.

2 Q Did you tell Delegate Jones that you didn't agree with the  
3 changes you've just described?

4 A Yes, I did.

5 Q And did he accommodate your concerns in the final map?

6 A We talked about the area, basically about Norfolk State,  
7 Park Avenue that was running along there which, to the right of  
8 that Booker T. Washington High School was also in that area,  
9 and Booker T. Washington High School was taken out of the 90th  
10 District, but any changes that were made were very minor, and I  
11 think there was -- it was along Park Avenue. I'm not sure of  
12 all the details. It's been a long time.

13 Q I understand. Was Union Chapel removed from your district  
14 in the final map?

15 A Yes.

16 Q Was Norfolk State University split between your district  
17 and House District 89 in the final map?

18 A Yes.

19 Q Why did you want to keep Union Chapel in your district?

20 A Well, I had known those people for a long time prior to  
21 modern-day history. I had been the president of the Norfolk  
22 chapter of the Southern Christian Leadership Conference, an  
23 organization that Dr. King headed up, and I had worked with  
24 them and a number of other people, not just in Union Chapel but  
25 in that surrounding area in terms of trying to make the city a

1 better place. They were dedicated people. I visited the  
2 church out there often, and I knew most of the people, and I  
3 think they knew me, too.

4 Q Did you ultimately vote for the final redistricting plan,  
5 House Bill 5005?

6 A Yes, I did.

7 Q Why?

8 A I've been asking myself that question for a long time. I  
9 wondered why I did, but it would have been simply a protest  
10 vote if I had voted against it because I knew the outcome, what  
11 it was going to be anyway, so rather than to just try to cause  
12 disruption, I just went along with it.

13 Q Delegate Jones has testified that you supported a  
14 55 percent fixed racial target. Did you?

15 A No.

16 Q Did you ever express any concern to Delegate Jones or  
17 anyone else about the black voting-age population in your  
18 district falling too low?

19 A No, I was never concerned about that. I knew that I was  
20 there to represent all the people, both black and whites and  
21 Hispanics and others, and I was not concerned about whether or  
22 not the percentage was -- the majority was black or not.

23 Q Did you ever express concern to Delegate Jones or anyone  
24 else about the black voting-age population falling too low in  
25 any other House district?

1 A Not that I can recall, no.

2 Q Did you get electoral support from white voters?

3 A Yes, I did. As a matter of fact, in Virginia Beach, the  
4 mayor of Virginia Beach, it was a Republican, he endorsed me,  
5 and I had a number of people, whites throughout both districts  
6 in Chesapeake, Norfolk, and Virginia Beach when it was three  
7 areas, they supported me. I never considered whether or not  
8 there was a majority of blacks. I wanted to represent the  
9 people.

10 Q Did you ever tell Delegate Jones that your district or any  
11 other district needed a 55 percent black voting-age population  
12 as a fixed racial target?

13 A No, I did not.

14 Q Did you ever discuss black voting-age population in any  
15 context with Delegate Jones?

16 A No.

17 MS. BRANCH: No further questions. Thank you.

18 JUDGE PAYNE: Any questions?

19

20 CROSS-EXAMINATION

21 BY MR. RAILE:

22 Q Good morning, Delegate Howell.

23 A Good morning.

24 Q I understand that you had some involvement in the civil  
25 rights movement?

1 A Yes.

2 Q What was that involvement?

3 A I was the president of the Norfolk chapter of the Southern  
4 Christian Leadership Conference. We were in the process of --  
5 as you probably recall, May 17th, 1954, when the *Brown v. Board*  
6 *of Education* decision was handed down, most of the schools were  
7 not desegregated, and we were working in an attempt to get them  
8 integrated.

9 Q Was that experience part of what inspired you to run for  
10 the House of Delegates?

11 A I don't think so.

12 Q You don't think so?

13 A No.

14 Q Did you fight for civil rights in your time in the House  
15 of Delegates?

16 A Well, the demonstrations had just about subsided by that  
17 time, but I've always supported civil rights, even as a  
18 delegate, yes.

19 Q So during your time as a delegate, you did fight for civil  
20 rights; is that right?

21 A I've always --

22 JUDGE PAYNE: He said supported, I think.

23 MR. RAILE: Okay.

24 Q And your role in the 2011 redistricting was very minor; is  
25 that correct?

1 A That's correct.

2 Q Let's look at your district. Let's pull up  
3 Defendant-Intervenor's Exhibit 94 at page 12. Do you recognize  
4 this map?

5 A Yes, I do.

6 Q Do you understand how the coloring and the hatching works?

7 JUDGE PAYNE: Why don't you tell him --

8 Q Do you understand that the yellow portions are your  
9 district after the 2011 redistricting and that the crosshatch  
10 portions are the portions of your district before the 2011  
11 redistricting?

12 A What was that question again?

13 Q Do you understand that the yellow portions of the  
14 district --

15 JUDGE PAYNE: Solid yellow.

16 Q That's the district after the 2011 redistricting and the  
17 enacted plan; is that your understanding?

18 JUDGE PAYNE: Just the yellow part?

19 MR. RAILE: Both the yellow and the crosshatch and  
20 yellow --

21 JUDGE PAYNE: I think that's what's confusing him.  
22 Everything in yellow, whether it's plain yellow or  
23 crosshatched, was what? Was the district before redistricting;  
24 right?

25 MR. RAILE: The yellow district is the district after



1     redistricting, that's my understanding of the map.

2     Q     Does that look right to you?

3     A     I don't think so, because this is Chesapeake, is it not?

4     Those areas were --

5     Q     Let's walk around it. Do you see this precinct, College  
6     Park, that I just pointed to?

7     A     Yes, I see College Park.

8     Q     Is that in your district in the enacted plan of 2011?

9     A     I don't think so.

10    Q     You don't think so. And Sherry Park, is that in your  
11    district in the enacted plan?

12    A     I don't think so.

13    Q     You don't think so, okay. Is Davis Corner right here in  
14    your precinct after the enacted plan?

15    A     No.

16    Q     Is Barron Black in your district after the enacted plan?

17    A     No.

18    Q     Is Sherwood School in your district after the enacted  
19    plan?

20    A     No.

21    Q     Let's -- actually, is Chesterfield in your district after  
22    the enacted plan?

23    A     Chesterfield --

24    Q     Which I just pointed to down here.

25    A     Chesterfield Heights, I believe that is, yes.

1 Q You believe that is, okay. Is Union Chapel in your  
2 district after the enacted plan?

3 A No.

4 Q Was that taken out?

5 A That was taken out.

6 Q That is what you just testified to; correct?

7 A Yes.

8 Q Is Brambleton in your district in the enacted plan? This  
9 district down here.

10 A I'm trying to see it here.

11 JUDGE PAYNE: Are you all in dispute about what these  
12 mean, these things --

13 MR. RAILE: I'm --

14 JUDGE PAYNE: Wait just a minute. I'm under the  
15 impression from your indicator, your legend, that everything in  
16 yellow, whether it is crosshatched or not, was the enacted  
17 plan.

18 MR. RAILE: That's my understanding, too, Your Honor.

19 JUDGE PAYNE: And everything that's crosshatched,  
20 whether it's in yellow or not, was in the old district?

21 MR. RAILE: That's my understanding, too, Your Honor.  
22 Let's look at a different map --

23 JUDGE PAYNE: Do you agree with that, Mr. Hamilton?

24 MR. HAMILTON: I do. There's no dispute about the  
25 map. It's not my witness so it's not --

1 JUDGE PAYNE: I understand that. Thank you.

2 MR. RAILE: Let's look at Intervenor's Exhibit 91 at  
3 page 180. I'm not sure how to clear.

4 JUDGE PAYNE: What exhibit is this?

5 MR. RAILE: This is Intervenor's Exhibit 91 at page  
6 180.

7 Q And, Delegate Howell, do you recognize the district in  
8 this image?

9 A Yes, I do.

10 Q And do you understand that this is House District 90 in  
11 the enacted plan?

12 A That's not my understanding, because Chesapeake, this area  
13 here that I'm looking at, was taken out.

14 Q Is it your belief that Chesterfield was taken out in the  
15 enacted plan?

16 A Chesterfield --

17 JUDGE PAYNE: It's not Chesterfield, it's  
18 Chesterfield -- what is it? -- Heights. There's a difference  
19 between Chesterfield and Chesterfield Heights, I think, he's  
20 saying.

21 Q Okay. So is this -- do you understand the green area  
22 here -- I'm trying to draw it to be the borders of your  
23 district after the 2011 redistricting. Does that look about  
24 right to you?

25 MS. BRANCH: Objection, Your Honor. Object to the

1 form of the question. This is not a memory test, and the map  
2 is not in dispute.

3 JUDGE PAYNE: Well --

4 MR. RAILE: I'm trying to lay a found --

5 JUDGE PAYNE: Excuse me just a minute. Your  
6 objection is what?

7 MS. BRANCH: The map is not in dispute.

8 JUDGE PAYNE: I know, but the question is.

9 MS. BRANCH: Mr. Howell has not seen this map before.  
10 This appears to just be a memory test based on his memory.  
11 There's no dispute about what his district looked like after  
12 redistricting.

13 JUDGE PAYNE: What do you have to say in response to  
14 her objection?

15 MR. RAILE: My response is I'm trying to lay the  
16 foundation and see if there is foundation. I believe he  
17 sought --

18 JUDGE PAYNE: Objection overruled. I think he's on  
19 cross-examination. It's fair game to assess whether the  
20 witness knows the boundaries he's been talking about or not.

21 Q So, again, to clarify, I'm just trying to identify whether  
22 your understanding comports with my understanding which is that  
23 this green border reflects the boundary of your district after  
24 the 2011 redistricting.

25 A No, I don't think it does.

1 Q Okay. Let me ask you a few other brief questions. Can  
2 you identify where Norfolk State University is on this map? I  
3 believe you testified about that a few minutes ago.

4 A Yes.

5 JUDGE PAYNE: And on this map, you are talking about  
6 Defendant-Intervenors' Exhibit 91, page 180; is that what you  
7 are doing?

8 MR. RAILE: That's right.

9 THE WITNESS: This writing here is very small. I  
10 can't see it.

11 JUDGE PAYNE: Would it help you, sir, if I gave you a  
12 book that had maybe a little bit bigger picture on it?

13 THE WITNESS: It certainly would.

14 JUDGE PAYNE: Why don't you take a crack at this and  
15 see if it helps. It's not a whole lot bigger, but I can read  
16 it, and it has to be pretty good for me to read it. Can you  
17 read that and see it any better, because it's the same thing  
18 but the print on the screen is smaller. And I think we can get  
19 you a magnifying glass if you need one. Does the print size on  
20 that help you, sir?

21 THE WITNESS: It helps some, but I'm trying to see  
22 here where Norfolk State University is, and I'm having  
23 trouble -- oh yeah, I see it now. Okay, I can see Norfolk  
24 State now.

25 Q You can see the university; is that right?

1 A Well, I see the writing Norfolk State University.

2 Q Are you able to point where that is on the computer screen  
3 here?

4 A It's right around here.

5 Q We can set the map aside at this time. Your understanding  
6 is that the racial makeup in House District 90 was about the  
7 same before the 2011 redistricting as it was after; is that  
8 correct?

9 A That's correct.

10 Q Your understanding is there wasn't an influx of whites or  
11 blacks into or out of your district; is that correct?

12 A That's correct.

13 Q Who is Delegate Lionell Spruill?

14 A Who is he?

15 Q Yeah, who is he?

16 A He was a delegate that represented part of Chesapeake.

17 Q Did he have a role in the 2011 redistricting?

18 A I don't know.

19 Q You don't know. Who is Delegate Johnny Joannou?

20 A He was a delegate in the House of Delegates. He's now  
21 deceased.

22 Q And he was a member of the Democratic party; is that  
23 correct?

24 A That's correct.

25 Q He often voted with the Republican delegates, though;

1 isn't that correct?

2 A I'm not sure about that. I don't know.

3 MR. RAILE: You're not sure. No further questions.

4 JUDGE PAYNE: Any redirect?

5 MS. BRANCH: Very brief, Your Honor.

6

7 REDIRECT EXAMINATION

8 BY MS. BRANCH:

9 Q I'd like to direct your attention to  
10 Defendant-Intervenors' Exhibit 91, page 180. This is the map  
11 we were just looking at.

12 JUDGE PAYNE: We need to get the book back.

13 MS. BRANCH: We actually probably don't need the book  
14 for what I'm going to do.

15 Q Delegate Howell, this area here that I just marked, is  
16 that Union Chapel?

17 A Yes.

18 Q And that was taken out of your district?

19 A Yes, it was.

20 Q Right here where I put a dot, is that Booker T. Washington  
21 High School?

22 A Yes, it is.

23 Q Did you testify about that earlier?

24 A Yes.

25 Q That was removed from your district?

1 A Yes, it was.

2 Q And this, that area there that I just marked, is that  
3 Chesapeake?

4 A Yes, that's Chesapeake.

5 Q And that was removed from your district; right?

6 A Yes. All of Chesapeake was.

7 MS. BRANCH: No further questions. Thank you.

8 JUDGE PAYNE: Can he be excused permanently?

9 MS. BRANCH: Yes, he may, Your Honor.

10 MR. RAILE: Yes, Your Honor.

11 JUDGE PAYNE: Thank you very much for giving us your  
12 testimony. You're excused to go about your business, sir. You  
13 are free to remain in the courtroom if you'd like to, but you  
14 don't have to.

15 THE WITNESS: Thank you.

16 JUDGE PAYNE: Your next witness?

17 MS. KHANNA: Plaintiffs call Delegate Delores McQuinn  
18 to the stand, please.

19

20 **DELORES L. McQUINN,**

21 a witness, called at the instance of the plaintiffs, having  
22 been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. KHANNA:

25 Q Good morning, Delegate McQuinn.



McQuinn - Direct

97

1 A Good morning.

2 Q Can you please state your full name for the record.

3 A Yes. Delores L. McQuinn.

4 Q Can you please spell your last name.

5 A M-c-Q-u-i-n-n.

6 Q Are you currently a delegate for the Commonwealth of  
7 Virginia?

8 A Yes.

9 Q Which district do you represent?

10 A I represent the 70th House District.

11 Q What is your current occupation other than as a delegate?

12 A Associate minister at New Bridge Baptist Church.

13 Q When did you first run for elected office?

14 A In the '90s, early '90s. I was appointed to the school  
15 board in '92 and then ran in 1993.

16 Q Which school board was that?

17 A Richmond city school board.

18 Q How long were you on the school board?

19 A From 1992 until 1998.

20 Q Did you hold any other elected positions prior to becoming  
21 a delegate?

22 A Yes. And then I ran for Richmond City Council.

23 Q How long did you serve on the Richmond City Council?

24 A For ten years.

25 Q When did you first run for the House of Delegates?

1 A In 2009.

2 Q And that was in District 70?

3 A Yes.

4 Q What is your party affiliation?

5 A Democrat.

6 Q Was there a democratic primary in 2009?

7 A Yes.

8 Q And do you recall approximately what share of the vote you  
9 received?

10 A Yes. I received 83 percent of the vote.

11 Q Was there -- I believe that was a special primary that  
12 was --

13 JUDGE PAYNE: You all were talking over each other.

14 THE WITNESS: Sorry.

15 Q I was just asking, I believe the primary you just  
16 mentioned was a special primary held to fill an open seat; is  
17 that right?

18 A Yes.

19 Q Was there a special general election that followed that  
20 primary?

21 A Yes.

22 Q And you ran unopposed in that special general election; is  
23 that right.

24 A Yes.

25 Q Did you run for reelection then in 2009 during the regular

1 election cycle?

2 A Yes.

3 Q Was there a Democrat primary at that time?

4 A Yes.

5 Q There was a Democratic primary in the regular election  
6 cycle after your initial --

7 A No, I'm sorry. Let me back up.

8 Q Sure.

9 A I ran in 2009 in the general election, and there was  
10 opposition independent.

11 Q There was a contested general election.

12 A Yes.

13 Q Your opponent was a member of the independent party; is  
14 that right?

15 A Yes.

16 Q Run as an independent. Do you recall approximately what  
17 share of the vote you received in that election?

18 A I think around 78 percent.

19 Q Have you run in a contested election since 2009?

20 A Yes.

21 Q And when was that?

22 A This year, 2017, in the primary in June.

23 Q You had a contested Democratic primary.

24 A Yes.

25 Q Do you recall who your opponent was?

1 A Yes, Alex Mejias.

2 Q I take it you won that primary?

3 A Yes.

4 Q Do you recall approximately the percentage of the vote  
5 that you received?

6 A 82 percent of the vote.

7 Q And are you being challenged in the upcoming general  
8 election in House District 70?

9 A No.

10 Q Delegate McQuinn, do you recall that in the first half of  
11 2011, the House of Delegates took up the redistricting process?

12 A Yes.

13 Q And do you know which delegate was primarily responsible  
14 for the 2011 redistricting process?

15 A Yes.

16 Q Who was that?

17 A Delegate Chris Jones.

18 Q Did you ever have any meeting with Delegate Jones about  
19 redistricting?

20 A I had an initial meeting with Delegate Jones and Delegate  
21 Betsy Carr and Delegate Jennifer McClellan.

22 Q Do you recall where that meeting took place?

23 A Legislative Services, I think.

24 Q Do you recall what was discussed during that meeting?

25 A It was more a presentation of our lines that were drawn

1 and what was presented to us at that particular time.

2 Q Anything else that you remember about the nature or the  
3 substance of that meeting between -- that took place between  
4 Delegate Jones, you, Delegate Carr and Delegate McClellan?

5 A No. I don't recall a lot that occurred in that meeting.  
6 I do know that there was maybe some limited discussion, and  
7 Delegate McClellan and myself had to work out some logistics  
8 because of the bordering of the lines.

9 Q Did you ever meet with Delegate Jones one on one to  
10 discuss redistricting?

11 A No.

12 Q Did Delegate Jones ever ask for your input on how your  
13 district should be configured?

14 A Not that I recall.

15 Q At any point, did you provide Delegate Jones input on how  
16 your district should be configured?

17 A No.

18 Q Did you ever tell Delegate Jones that you were pleased  
19 with the final product when it came to your district?

20 A No, I don't think so. I don't recall.

21 Q Did you ever --

22 JUDGE PAYNE: I'm sorry, your answer was what?

23 THE WITNESS: I don't recall.

24 JUDGE PAYNE: You don't recall.

25 THE WITNESS: No.

1 Q Did you ever tell him that you were displeased with the  
2 final product of your district?

3 A No.

4 MS. KHANNA: Can we please put up  
5 Defendant-Intervenor's Exhibit 94, page three.

6 Q Delegate McQuinn, is this a map of District 70?

7 A Yes.

8 Q And have you seen this map before?

9 A Yes.

10 Q Let me just walk through what the different shaded areas  
11 represent. Anything in yellow is currently in House  
12 District 70. The portion that is yellow and crosshatched  
13 existed in the district before the 2011 redistricting, and the  
14 yellow portion that is plain yellow is the portions that were  
15 added.

16 Those portions that are crosshatched in white are the  
17 portion of the district that were excluded from the district  
18 during the 2011 redistricting process. Does that -- do you  
19 feel like you can understand that --

20 A Yes.

21 Q So do you see at the top, toward the top of the district,  
22 a little star that has your name by it?

23 A Yes.

24 Q Is that your residence there?

25 A Yes.

1 Q Do you know what VTD your residence is in?

2 A 705.

3 Q This map reflects that certain changes were made to your  
4 district during the 2011 redistricting process; is that right?

5 A Yes.

6 Q Did you have any concerns about those changes?

7 A Yes.

8 Q What was your primary concern?

9 A My primary concern was the expanded area of Chesterfield  
10 County, which would be the south of my district, and then 701  
11 and 702 which I had represented a very long time. I had  
12 concerns about losing those individuals.

13 Q Why were you concerned about losing 701 and 702?

14 A Because they were a part of my school board and district  
15 that I had represented way over probably 15 years.

16 Q And do you know the racial composition of 701 and 702?

17 A Predominantly African American.

18 Q Did you ever express the concern about losing 701 and 702  
19 to Delegate Jones?

20 A No.

21 Q Why not?

22 A Just didn't feel like I had an opportunity to do that.

23 Q Did you ever express your concern about losing VTD 701 and  
24 702 to anybody else?

25 A Yes.

1 Q Who did you express it to?

2 A To Delegate McClellan.

3 Q Do you have an understanding about why you lost those  
4 VTDs?

5 A My understanding, in order to make her numbers work, that  
6 I would have to lose some of the African-American population in  
7 that area, and it would move her, I guess, further east. Her  
8 district had to move further east; therefore, I had to lose  
9 some as a result of that.

10 Q When you say we had to make her numbers work, what are you  
11 referring to?

12 A My understanding was she had lost African-American  
13 population, and so the only way to sort of acquire that is to  
14 move -- she would have to move further east to make that  
15 happen.

16 Q When you were talking about making her numbers work, you  
17 were referring to the black population numbers?

18 A Yes.

19 Q And you mentioned the other concern that you had was about  
20 the Chesterfield area here.

21 A Yes.

22 Q This area around here?

23 A Yes.

24 Q What was your concern about this addition to your  
25 district?



1 A Well, I raised the question just informal, well,  
2 discussion with one of the other delegates about how -- the  
3 reason for such wide expansion of that particular area.

4 Q Do you know what district those areas were in previously?

5 A They would -- no, I don't.

6 JUDGE PAYNE: Are you going to relate this to the  
7 redistricting process, because just casual conversations with  
8 somebody don't seem to be something that we need to be  
9 concerned with.

10 MS. KHANNA: Yes, Your Honor.

11 JUDGE PAYNE: Had a conversation with Jones or with  
12 McClellan and somehow her views were related because McClellan  
13 was her agent for communication, that's one thing, but a chat  
14 with Joe Smith doesn't do much. You haven't yet connected it.  
15 If you can, go ahead. If you don't, let's move on.

16 MS. KHANNA: Understood, Your Honor.

17 Q Delegate McQuinn, are you aware as to why those portions  
18 of the -- of your district were added to District 70?

19 A No.

20 Q Are you aware of what the racial composition is of any of  
21 the VTDs located in that Chesterfield area added to your  
22 district?

23 A Are you asking at the time or now?

24 Q At the time, were you aware?

25 A No.

1 Q Are you aware now?

2 A It's a mix composition.

3 Q Did you have any other concerns about the configuration of  
4 your district?

5 A No.

6 Q Did you ever have any discussions with then-Delegate Dance  
7 specifically about the configuration of District 70?

8 A No, I did not.

9 Q Did you have any conversations with then-Delegate Dance  
10 about any other districts?

11 A I had some concerns about one of the other colleague's  
12 districts --

13 JUDGE PAYNE: Excuse me, Ms. McQuinn, but the  
14 question was did you have discussions about it and not whether  
15 you had concerns. Do you want to ask the question again.

16 MS. KHANNA: Sure.

17 Q The question was, did you have any conversations with  
18 then-Delegate Dance about any other of the challenged  
19 districts?

20 A Yes.

21 Q Which district was that?

22 A 75.

23 Q What did you discuss with Delegate Dance about your  
24 concerns with 75?

25 A Just the prison population that was included in a

1 particular district and a nonvoting population.

2 Q Did you ever talk with Delegate Spruill during the course  
3 of the redistricting process?

4 A I don't recall.

5 Q Did you have any conversations with him about the  
6 configuration of District 70?

7 A No.

8 Q Or any other districts?

9 A No.

10 Q You mentioned just now that you had a discussion about  
11 Delegate Tyler's district. What district number was that?

12 A 75, I think.

13 Q And are you familiar with that district, with Delegate  
14 Tyler's district?

15 A Somewhat.

16 Q Do you consider your district to be different than  
17 Delegate Tyler's district in any way?

18 A Yes.

19 Q In what way?

20 A Delegate Tyler's district is much more rural, a more rural  
21 area than mine. Mine is more urban and suburban.

22 Q Did you ever tell anyone that a 55 percent black  
23 voting-age population would be needed in your district?

24 A No.

25 Q Did you ever tell anyone that a 55 percent black

1 voting-age population would be needed in any House of Delegates  
2 district?

3 A No.

4 Q How did you vote on House Bill 5005?

5 A I voted for it.

6 Q Why?

7 A You learn to choose your battles, and I didn't have much  
8 of a say-so, so I moved forward to represent the people that  
9 had been handed me.

10 MS. KHANNA: Thank you delegate McQuinn, I have no  
11 further questions.

12

13 CROSS-EXAMINATION

14 BY MS. McKNIGHT:

15 Q Good morning, Delegate McQuinn. It's nice to see you  
16 again.

17 A Good morning.

18 Q I'll try to be brief.

19 A Okay.

20 Q I understood from your testimony earlier today that the  
21 only meeting you recall with Delegate Jones regarding  
22 redistricting was a meeting with you, Senator McClellan, and  
23 Betsy Carr; is that right?

24 A Yes.

25 Q And I understood from deposition testimony that you gave

1 that in that meeting, Jones sought input as to the Richmond --  
2 pardon me. Delegate Jones sought your input as to the  
3 districts in Richmond; is that fair?

4 A No -- no.

5 Q Do I understand correctly from your deposition testimony  
6 that Delegate Jones suggested that between you, then-Delegate  
7 McClellan, and Betsy Carr, that you could discuss the Richmond  
8 issues, the districting in Richmond and work it out amongst  
9 yourselves?

10 A Yes.

11 Q Now, were you here for the testimony that Senator  
12 McClellan gave earlier today?

13 A Yes, for part of it.

14 Q Did you hear her describe a similar meeting in that  
15 testimony?

16 A I don't think so.

17 Q Is it possible there were two different meetings comprised  
18 of the same four people, is it?

19 A Beg your pardon?

20 Q Did you have just one meeting with Delegate Jones with the  
21 three of you?

22 A I only recall one meeting occurring with Delegate Jones,  
23 myself, and -- Delegate Jones, Carr, McClellan, and myself,  
24 yes.

25 Q And, now, you don't recall bringing any concerns regarding

1 redistricting directly to Jones; is that right?

2 A No.

3 Q And you don't recall making any requests to Delegate Jones  
4 about your district; is that right?

5 A No.

6 Q Did you ever tell Delegate Jones that a 55 percent BVAP  
7 level was not necessary in HD 70 for it to be a performing  
8 majority/minority district?

9 A No.

10 Q Were you aware of any analysis of HD 70 showing that there  
11 was not racial polarized voting?

12 A Could you restate the question?

13 Q Sure. At the time of redrawing HD 70, were you aware of  
14 any analysis that showed that HD 70 did not have racial  
15 polarized voting?

16 A No.

17 Q Now, Delegate McQuinn, you wrote a letter to your  
18 constituents in the fall of 2011 that said, quote, at the last  
19 redistricting session, a fair and equitable redistricting plan  
20 was adopted for the House and the Senate; isn't that right?

21 A Yes.

22 Q And you voted for the plan; isn't that right?

23 A Yes.

24 MS. McKNIGHT: Thank you very much for your time.

25 THE WITNESS: Thank you.

1 MS. KHANNA: No redirect, Your Honor.

2 JUDGE PAYNE: Can she be excused permanently?

3 MS. KHANNA: She can.

4 JUDGE PAYNE: Ms. McKnight?

5 MS. McKNIGHT: Yes, she may, Your Honor.

6 JUDGE PAYNE: Thank you very much for being with us,  
7 Delegate McQuinn, and giving your testimony. You may be  
8 excused.

9 THE WITNESS: Thank you, sir.

10 JUDGE PAYNE: Your next witness.

11 MS. BRANCH: Plaintiff calls Senator Rosalyn Dance.  
12

13 **ROSALYN R. DANCE,**

14 a witness, called at the instance of the plaintiff, having  
15 been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BRANCH:

18 Q Good afternoon, Senator Dance.

19 A Good afternoon.

20 Q Can you please state your name for the record.

21 A Rosalyn R. Dance.

22 Q And could you spell your last name, please.

23 A D-a-n-c-e. D as in David.

24 Q Were you a member of the House of Delegates during the  
25 2011 redistricting?

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1 A Yes.

2 Q What district did you represent?

3 A The 63rd District.

4 Q What role did you play in the 2011 redistricting?

5 A As a member of Privileges and Elections, I was one of the  
6 two Democrats appointed to the six-member group that worked on  
7 redistricting.

8 Q And you referenced a six-member group. Was that the  
9 redistricting subcommittee?

10 A Yes.

11 Q What was your primary task as a member of that  
12 subcommittee?

13 A Being a member, I represented the Democratic side and the  
14 12 minority districts that were a part of it that was to make  
15 sure that we met -- everybody had to meet the equality  
16 standard, the one -- the plus or minus one deviation as far as  
17 getting that close to the actual number which was 80,000, I  
18 think, at that time and that we had to make sure that we met  
19 the Voter Rights Act as it related to the minorities having a  
20 right to vote, and from our chair, Delegate Jones, if we had 55  
21 percent, that would meet the Department of Justice's  
22 requirement.

23 Q Senator Dance, do you remember testifying at the last  
24 trial in this case?

25 A I know that I testified.



1 Q And you testified at the last trial about needing to make  
2 sure that Delegate Tyler's district achieved a 55-percent black  
3 voting-age population? Do you remember that?

4 A Yes.

5 Q Does your former House district border Delegate Tyler's  
6 district?

7 A Yes.

8 Q Were any changes made to your former House district in  
9 order to maintain 55 percent in Delegate Tyler's district?

10 A Yes.

11 Q What were those changes?

12 A Prior to the redistricting plan, my district encompassed  
13 all of Dinwiddie County. With the new plan, it would require  
14 me to give up a sizable amount of Dinwiddie County to allow  
15 Delegate Tyler to get -- to attempt to get to her 55 percent.

16 Q Senator Dance, let me direct your attention to  
17 Defendant-Intervenor's Exhibit 94, page one. Have you seen  
18 this map before?

19 A Yes.

20 Q And do you understand how to read it?

21 A I'm not the best, but, yes, and I can't see too good.  
22 I'll try my glasses first, and then I might need the big book.

23 JUDGE PAYNE: Let me save the time. We'll give you  
24 the big book.

25 THE WITNESS: Thank you.

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1 Q While you are getting the big book, I'll quickly review  
2 how this map is read. The white crosshatched areas are areas  
3 that were in your district prior to redistricting and were  
4 removed after. Yellow crosshatched was in your district prior  
5 to redistricting and remained in your district after. Then the  
6 bright yellow with no crosshatching represents areas that were  
7 added to your district that were not in your district prior to  
8 the redistricting.

9 JUDGE PAYNE: Do you understand that to be the case,  
10 ma'am?

11 THE WITNESS: Yes.

12 Q Senator Dance, which voters were moved out of your  
13 district as a result of redistricting?

14 A I lost -- so my Dinwiddie voters.

15 Q I'm going to make a mark on the screen. Is that Dinwiddie  
16 County?

17 A Dinwiddie County.

18 Q Where I drew that red line on the screen?

19 A Yes.

20 Q Did you want to give up part of Dinwiddie County to  
21 Delegate Tyler?

22 A No.

23 Q Why not?

24 A That was one of my strongest districts, and I had all of  
25 it, and I wanted to keep all of it.

1 Q What was your understanding as to why it was moved to her  
2 district?

3 A Delegate Tyler's district bordered up against the North  
4 Carolina border, and there were not enough African Americans to  
5 get her her 55 percent. So she had to come north, and to do  
6 that she would have to take more of Dinwiddie County to help  
7 her get her numbers.

8 Q I'd like to direct your attention to the New Hope  
9 precinct. I'm going to put a couple dots here. Do you see  
10 that?

11 A Yes.

12 Q Did you ask Delegate Jones to keep the New Hope precinct  
13 in your district?

14 A I think -- I know I specifically did not ask -- I guess  
15 the answer is no, but can I clarify?

16 Q Please clarify.

17 A I wanted to keep one particular -- and it's one particular  
18 constituent that was in that area, I thought might be in that  
19 area, so I wanted to make sure, but he's already in that area.  
20 He was already in that area.

21 Q And that area was kept in your district; is that right?

22 A Yes, uh-huh.

23 Q I want to shift gears to talk about the voters who were  
24 moved into your district. Where did the voters who were moved  
25 into your district live?

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1 A I picked up Prince George County and parts of the city of  
2 Hopewell.

3 Q Why were voters in Prince George moved into your district?

4 A Because I had to give up a lot of my African-American  
5 voters in Dinwiddie County. To pick them up, I had to  
6 travel -- I was willing to travel to Prince George and Hopewell  
7 to get those numbers.

8 Q Was Hopewell also added to your district to raise your  
9 black voting-age population?

10 A Yes.

11 JUDGE PAYNE: Did you pick up all of Prince George  
12 County and all of Hopewell?

13 THE WITNESS: No, sir. I had to pick up the number  
14 to get me to the 55 percent, minimum 55 percent to meet the  
15 standard.

16 Q Are the areas of Prince George that were added to your  
17 district predominantly African American?

18 A Yes.

19 Q Are the areas of Hopewell that were added to your district  
20 predominantly African American?

21 A Yes.

22 Q Based on your conversations with Delegate Jones, did you  
23 understand that your district was being extended to Hopewell to  
24 fix a river crossing in House District 74?

25 A No.

1 Q And what wards of Hopewell were added to your district?

2 A Wards 2, 6, and parts of Ward 7.

3 Q Can you describe which parts of Ward 7 were added?

4 A I picked up the, that part that had more African Americans  
5 because, again, I was trying to make sure that I had my  
6 55 percent plus, whatever.

7 Q And you can set the map aside.

8 JUDGE PAYNE: 55-plus whatever?

9 THE WITNESS: At least I had to have 55 percent to  
10 make sure that we met the standard for the Department of  
11 Justice review.

12 Q Did you draw maps during the redistricting process?

13 A I drew maps from -- yes, I drew some maps.

14 Q Where did you draw them?

15 A I drew them on my home computer using the sample we had on  
16 website to practice.

17 Q And did you ever draw any maps of your district that were  
18 below 55 percent black voting-age population?

19 A No.

20 Q Why not?

21 A I had to have 55 percent to qualify, so I designed them in  
22 different configurations always looking for the 55 percent.

23 Q And I'd like to refer back to the map we were just looking  
24 at, so hopefully you still have the large book. This is  
25 Defendant-Intervenor's Exhibit 94, page one, and I'd like to

1 direct your attention -- I'm going to clear the screen -- to  
2 this area here, this hook drawn around the New Hope precinct.  
3 Do you see that area?

4 A Yes.

5 Q Delegate Jones has testified that he drew that hook around  
6 New Hope at your request to draw out a potential primary  
7 challenger. Did you have a potential primary challenger who  
8 lived there?

9 A No.

10 Q Did you tell Delegate Jones that you did?

11 A No.

12 Q Did you have a primary opponent in the 2011 election?

13 A No.

14 Q Did you have one in 2013?

15 A Yes.

16 Q And did she live in that hook around New Hope?

17 A No.

18 Q Where did she live?

19 A She lived in Petersburg.

20 Q Can you show where Petersburg is on the map, just put a  
21 dot --

22 A If I put my dot on this --

23 Q I'll do it and ask you if --

24 A Okay. I'm here. I think she's in Petersburg, so  
25 somewhere in here.

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1 Q Thank you. Senator Dance, did you make statements on the  
2 House floor about redistricting?

3 A Yes, I did.

4 Q And what were your House floor statements about?

5 A It was about the Delegate Jones' bill that we were looking  
6 at passage.

7 Q Was that House Bill 5005 and 5001?

8 A Yes.

9 Q Did you talk about needing a black voting-age population  
10 in the majority black districts?

11 A I did. I was speaking to justify why there should be  
12 support for that particular bill.

13 JUDGE PAYNE: Ms. Branch, if it's in an exhibit and  
14 she's already said it, it's there, and we don't need to expound  
15 on it. It's there -- that's exactly what the Supreme Court  
16 told us not to do, is to be adding to the record in the fashion  
17 about why somebody did something back in 2011. So let's keep  
18 it to what's relevant.

19 MS. BRANCH: Thank you, Your Honor.

20 Q What was your understanding as to where the 55 percent  
21 black voting-age population threshold came from?

22 A It came from our chair as far as instructions, guidance,  
23 that this is what we must have, 55 percent with a plus one  
24 deviate -- plus or minus one deviation to ensure for the 12  
25 minority districts that we had met the standard for the

1 Department of Justice, and I thought firmly that this plan did  
2 that.

3 Q Did you come up with the 55 percent black voting-age  
4 population?

5 JUDGE PAYNE: Ms. Branch, what difference does it  
6 make -- it's already been held in this case that it was applied  
7 across the board, and I thought you all were in agreement you  
8 weren't going to be relitigating all that. I understand some  
9 context is necessary for the questions, and we've tried to give  
10 you leeway for that, but you all are now really trying to retry  
11 a case that you've already -- the Supreme Court has already  
12 accepted the point. Can you go on with other things --

13 MS. BRANCH: Yes, Your Honor, and I just specifically  
14 wanted to focus on her statements that she made on the House  
15 floor about 55 percent and why she made those statements. She  
16 has a specific explanation, I believe, that she will testify  
17 to. If I can just explore that briefly and then I'll move on.

18 JUDGE PAYNE: For what they're worth. I think the  
19 Supreme Court told us you don't go back and redo the record  
20 like that. You don't paint things over again. There being no  
21 objection, I'm not going to keep it out.

22 Q Are you a team player, Senator Dance?

23 A Yes, I am.

24 Q Did that affect how you approached the redistricting  
25 process?



1 A When I stood to speak for the redistricting plan, I was  
2 one of six members, and, therefore, I was one of the team that  
3 presented this document even though it was a chair presenting  
4 it, and when I say "I," I'm saying I as one of the six members,  
5 and I speak for the six. This is what we have, and to the best  
6 of my ability, my knowledge at the time, this was the best plan  
7 we had, and I was a team player, I was supporting it as I did  
8 budget. As a member of the budget, I was a team player when we  
9 came to the floor.

10 Q Apart from what Delegate Jones told you, did you  
11 personally feel that a 55 percent black voting-age population  
12 was needed in the black districts?

13 A This was my first time doing redistricting. I trust that  
14 he had done this before. He was our chair. He normally came  
15 with information, and he was decisive, and I accepted that  
16 55 percent was a requirement to get the job done.

17 Q Did you get electoral support from white voters when you  
18 ran in House District 63?

19 A Yes, I did.

20 Q How do you know that?

21 A Alvin Blaha was one of them.

22 Q Who is he?

23 A Alvin Blaha was a constituent of Dinwiddie County. He has  
24 since become deceased.

25 Q Did he live in the New Hope precinct that we discussed

1 earlier?

2 A Yes.

3 Q Did you specifically ask he be retained in your district?

4 A Yes.

5 MS. BRANCH: No further questions. Thank you.

6

7 CROSS-EXAMINATION

8 BY MS. MCKNIGHT:

9 Q Good afternoon.

10 A Good afternoon.

11 Q Oh behalf of defendant-intervenors, I'll ask you a few  
12 questions today.

13 A Okay.

14 Q At your deposition and in testimony you've given just now,  
15 you've described a request you made to Delegate Jones to  
16 include a gentleman named Alvin Blaha in your district;  
17 correct?

18 A Yes.

19 Q And Mr. Blaha was special to you; right?

20 A Yes.

21 Q And you knew that this request would, quote unquote,  
22 stretch your district; is that right?

23 A I don't understand stretch. My district -- I understood  
24 that when he did the configurations, that as he so drew them,  
25 because I didn't really do my last configurations, he made the

1 recommended drawings, he said if I was willing to go to Prince  
2 George and Hopewell, then he could work things out. I was  
3 assuming for Delegate Tyler. Is that what you are asking me?

4 Q I'm asking you, I understood from your deposition  
5 testimony that you used the word "stretch," but I understand  
6 what you mean, that the -- and correct me if I'm wrong, that by  
7 making this request it would move your district in a different  
8 way, it would pull it in a different way, but you wanted Alvin  
9 Blaha in your district regardless of that; is that right?

10 A I'm not sure I understand what you are saying.

11 Q Okay. Do you remember testifying in deposition this  
12 August for this matter?

13 A This August, yes, uh-huh.

14 Q And in that deposition testimony, deposition, do you  
15 recall providing testimony about this request regarding Mr.  
16 Blaha?

17 A I did have -- I did answer questions in regard to this  
18 request.

19 JUDGE PAYNE: I think the question was, do you  
20 remember that.

21 THE WITNESS: No, but if you --

22 JUDGE PAYNE: Do you want to show it to her and  
23 refresh her recollection then.

24 THE WITNESS: Thank you.

25 MS. McKNIGHT: Could we put on page 31 of her

1 deposition transcript from this August, 2017, please.

2 THE WITNESS: You had it a little bit bigger. Could  
3 it go back to that size?

4 Q Please feel free to review for context, and then I'll  
5 direct you to the line regarding how it would shape your  
6 district.

7 JUDGE PAYNE: Do you want her to read the whole page  
8 or just down to line 14?

9 MS. McKNIGHT: If you could scroll down so you can  
10 see the bottom half of the page.

11 JUDGE PAYNE: Give her time to read. It's hard to  
12 read when it's going too fast. Tell them when you want them to  
13 move the screen.

14 THE WITNESS: Would you go back? There's a question,  
15 my question is do you know why it went here. Could you tell me  
16 what it is --

17 JUDGE PAYNE: Just read it to yourself. Read on down  
18 to line 15, and then they'll move the page to the rest of the  
19 page. That way you won't have to be trying to follow it while  
20 it's moving. That's hard.

21 THE WITNESS: Okay.

22 JUDGE PAYNE: Move it on down.

23 THE WITNESS: Thank you.

24 Q And directing you to lines, roughly lines 18 to 20, does  
25 that refresh your recollection about the request you made for

1 Alvin Blaha and the effect it would have on the shape of your  
2 district?

3 A I think I would like you to go to line 13 where it says --  
4 I remember saying this: It's not good being on this committee  
5 because you end up with whatever is left over. Everybody else  
6 decides what they want, but I want to keep my one constituent.  
7 His name was Alvin Blaha.

8 Q Thank you.

9 JUDGE PAYNE: Then it continues, and I want --

10 THE WITNESS: -- "to keep him. So to keep my Alvin  
11 Blaha, I had to go to Hopewell. They said they might have to  
12 stretch me or whatever to pick up that area."

13 JUDGE PAYNE: Why did you want to keep Alvin Blaha?  
14 You may have said, but I didn't follow.

15 THE WITNESS: It was -- really, he was my friend that  
16 was dying, and I just wanted to be there for him and his family  
17 as I was at the end, but it was just that thing of I was the  
18 last one to decide, so I didn't really pick my district.

19 Because I was on the committee I was a team player, I  
20 took whatever would be left for me after we took care of  
21 Delegate Tyler, because I wanted her to be satisfied. But as  
22 they stretched me in whatever direction they were to take me, I  
23 ask one thing in that I get to keep that one gentleman in my  
24 district.

25 JUDGE ALLEN: It sounds like you had no choice. Did

1 you have a choice?

2 THE WITNESS: I had no choice about having to give up  
3 Dinwiddie County because -- I thought I did because my  
4 colleague, Delegate Tyler, had to have 55 percent, and she was  
5 very unhappy about the fact that it was very, very difficult to  
6 get her there. And so to give her that -- and that was my  
7 statement. I'm on this committee, and it's not a very good  
8 thing because I get what's left over, but I accepted that  
9 because I was a team player, but I asked for one thing, that I  
10 could keep this one constituent in my district. No matter how  
11 they shaped me, let me keep that one constituent.

12 MS. McKNIGHT: Thank you.

13 Q According to your deposition testimony, you understood  
14 that this movement would take your district into a populus that  
15 would not, quote, give you African Americans, end quote. Does  
16 that ring a bell?

17 A No.

18 Q Would it refresh your recollection to see the deposition  
19 transcript?

20 A Yes, please.

21 Q Turn to page 32. Take your time reviewing the page, and  
22 then I'll ask you a specific question about a line.

23 A I'm sorry, did you say line 32?

24 Q Page 32, if you could review it at least through line 13.

25 A Okay. Okay.

1 Q So you understood that the request for Alvin Blaha would  
2 take your district into a populus that would not give you  
3 African Americans; am I quoting that correctly from your  
4 transcript?

5 A My concern was that I had to have --

6 JUDGE PAYNE: Excuse me, Senator. The answer to that  
7 question is yes or no. If you need to explain, you can ask for  
8 it or the lawyer who called you will give you an opportunity  
9 to -- ask it again.

10 Q So, you understood that this request for adding Alvin  
11 Blaha to your district would take your district into a populus  
12 that was not giving you African Americans; isn't that right?

13 A Yes.

14 Q Alvin Blaha lived on Squirrel Level Road; is that right?

15 A Yes.

16 Q And Delegate Jones granted your request; right?

17 A Actually, he was in my district. I got to keep him, yes.

18 Q Do you recall testifying at your deposition for this case  
19 in 2015 about Delegate McClellan?

20 A Please refresh my memory.

21 Q Sure. During that deposition, you discussed the fact that  
22 then Delegate McClellan was a, quote unquote, unique candidate.  
23 Does that ring a bell?

24 A No. Please refresh my memory.

25 JUDGE PAYNE: Let her see the deposition, I think, is

1 what she's asking for; is that right, Senator?

2 THE WITNESS: Yes.

3 JUDGE PAYNE: What page do you want to put up?

4 MS. McKNIGHT: Could you hold on one moment, Your  
5 Honor? Pardon me. Pardon me, Your Honors, thank you. I'm  
6 trying to keep this as focused as possible.

7 Q Let me paraphrase my question if you can bear with me. At  
8 the time of your deposition in 2015, do you recall testifying  
9 that then -- that Delegate McClellan, at the time, was an  
10 exceptional person and that she had high publicity as a  
11 candidate?

12 A No, I don't remember that, but if you can show me.

13 Q Okay. Could you turn to page 188, of May 21, 2015,  
14 deposition.

15 A A little larger, please. Okay, thanks.

16 Q If you could scroll down to -- I'm looking at lines 15  
17 through 18.

18 MS. BRANCH: Objection, Your Honor.

19 THE WITNESS: Could I read this in context of what  
20 was before us --

21 JUDGE PAYNE: Read the whole page if you want to, to  
22 yourself. Then there'll be a question but there's an  
23 objection.

24 THE WITNESS: They have to scroll it down.

25 MS. BRANCH: Objection is to read both the question



1 and the answer.

2 JUDGE PAYNE: Let's remember that the correct  
3 procedure is to ask, in this instance, did you think in  
4 such-and-such year that Delegate McClellan was exceptional or  
5 whatever, and she says, yes, THEN there's no impeachment. If  
6 she says no, then you say, do you remember testifying at your  
7 deposition to the contrary. You don't say it. You say  
8 whatever it is the answer is. That's the way to do -- then we  
9 don't ever have objections or we don't ever have impeachment.  
10 So start with the question that you want and that is, is that  
11 right -- when was this, in 2011?

12 MS. McKNIGHT: 2015.

13 JUDGE PAYNE: In 2015, did you say that you thought  
14 Delegate McClellan was a unique person, exceptional person, or  
15 words to that effect.

16 THE WITNESS: I defined her. I described her, and  
17 that was the end product of describing who she was, and I think  
18 that that determines my response, because --

19 JUDGE PAYNE: Is the answer to that question yes --

20 THE WITNESS: In the context of having defined who  
21 she was as from young adulthood and what she had done as a  
22 child, her role and how she was received by others because of  
23 her -- the sum total of who she was as a person.

24 Q And you were describing her in this way in the context of  
25 other candidates that might follow her in HD 71; isn't that

1 right?

2 A They would not meet her -- be the same as Jennifer  
3 McClellan running for that position.

4 Q And that they would not have as much exposure as she had;  
5 is that right?

6 A Did I put that there?

7 JUDGE PAYNE: She's asking you the question. That's  
8 all.

9 THE WITNESS: What I said is what I stand by.

10 Q So do you stand by the fact that the -- the statement that  
11 the average person will not have that much exposure when they  
12 go forward?

13 A In the context of the way I made that statement, that was  
14 a part of that statement.

15 Q Then you don't believe that 55 -- you don't know whether  
16 52 percent BVAP would be enough for someone who is not Delegate  
17 McClellan to get elected in HD 71; isn't that right?

18 A I do not know.

19 Q You believed that 55 percent for Jennifer McClellan was  
20 exceptional, that she could do it with 50 percent; is that  
21 right?

22 A Did I say that?

23 JUDGE PAYNE: She's asking you --

24 THE WITNESS: I'm sorry. You're asking me that  
25 today.

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1 Q Yes.

2 A Is that a question?

3 Q Yes.

4 A I do not know.

5 JUDGE PAYNE: Take the deposition down right now.

6 It's distracting the witness from -- because it's confusing her  
7 what she's being asked.

8 Q You believed that anyone coming after Jennifer McClellan,  
9 55 percent, clear the bar, was a good number?

10 A I accepted that the chair who was experienced, had done  
11 this before said --

12 JUDGE PAYNE: Senator Dance, there's a question on  
13 the floor. If you don't understand it, say you don't  
14 understand it.

15 THE WITNESS: I don't understand it.

16 JUDGE PAYNE: That question is easily answered yes or  
17 no, and then if you need to augment it, the lawyer on your side  
18 can ask that. Ask the question again, please.

19 Q You believed at the time of your deposition in 2015 that  
20 anyone coming after Jennifer McClellan, 55 percent, clear the  
21 bar, was a good number?

22 A Yes.

23 Q And you believed in 2015 that you -- that the 55 percent  
24 number sounded sound, and you worked with it; isn't that right?

25 A That number was given to me by the chair, and I accepted

1 it.

2 JUDGE PAYNE: Excuse me, Senator Dance. Ask the  
3 question again, and answer it yes or no, and if you need to  
4 explain it -- please stay with that approach, if you would, Ms.  
5 McKnight.

6 Q You believed in 2015 that the 55 percent BVAP number  
7 sounded sound; isn't that right?

8 A Yes.

9 Q And you believed in 2015 that 55 percent for Jennifer  
10 McClellan was exceptional, she could do it with 50 percent;  
11 isn't that right?

12 MS. BRANCH: Objection. Asked and answered.

13 A No.

14 JUDGE PAYNE: It wasn't answered. It was asked. And  
15 her answer this time was no. Did I hear you correctly?

16 THE WITNESS: No.

17 JUDGE PAYNE: You felt like she couldn't do it with  
18 50 percent; is that what you are saying?

19 THE WITNESS: I didn't give a specific number. I  
20 don't know what that number might be.

21 JUDGE PAYNE: Go ahead, Ms. McKnight.

22 Q Do you recall testifying in this matter in May 2015 in a  
23 deposition?

24 JUDGE PAYNE: She already said, I think, she  
25 remembers the deposition. We got that. What's the next part?

1 Q Would it refresh your recollection to see a portion of the  
2 deposition about whether -- what your belief was in 2015 about  
3 the 55 percent figure and Delegate McClellan?

4 A If I hear I said 50 percent --

5 JUDGE PAYNE: I think her question was would it  
6 help --

7 THE WITNESS: Yes.

8 JUDGE PAYNE: Put it up there for her, if you would,  
9 please, and point her to the question and answer. Do you need  
10 some water?

11 THE WITNESS: Yes, please.

12 JUDGE PAYNE: You've been testifying awhile. Maybe  
13 you need some.

14 Q Take your time reviewing. The question begins on line  
15 five, and your answer concludes on line 14.

16 A I said that, and, yes.

17 Q So just to make a clear record, the question was, "Given a  
18 situation like Delegate McClellan's district, did you think  
19 55 percent was a reasonable number for a district like hers?"

20 And your answer was, "55 percent for Jennifer McClellan  
21 was exceptional. She could do it with 50 percent, but anybody  
22 coming after her, 55 percent, clear the bar, was a good number.  
23 And I'm speaking about people that have been there before.  
24 They've done this process before. If they think it's a good  
25 number, it's a great number." Is that accurate?

1 A Yes. What's important, I think, is I'm speaking about  
2 people that have been there before, they've done this process.  
3 If they think it's a good number, it's a great number, and,  
4 again, I was referring to Delegate Jones. I trusted that he  
5 had a good number, and I stand by this.

6 Q And you testified in 2015 that your belief was that those  
7 who had experience on redistricting, their integrity, their  
8 honesty was intact, their ethics were intact. Did that include  
9 Delegate Jones?

10 A Yes.

11 Q Senator Dance, did you ever tell Delegate Jones that your  
12 district did not need 55 percent BVAP in order to be a  
13 performing majority-minority district?

14 A No, I do not remember such a conversation.

15 Q Were you aware of any analysis showing that in your  
16 district, HD 63, there was no polarized voting?

17 A No.

18 MS. McKNIGHT: Your Honors, I'd like to conclude with  
19 a demonstrative. This is a video that was admitted in the 2015  
20 trial as an exhibit, but it was not played.

21 MS. BRANCH: Objection, Your Honor. I believe that  
22 defendant-intervenors are going to show a video of --

23 JUDGE PAYNE: It might be helpful for you to get up  
24 where I can hear you a little bit better. Sorry. Don't you  
25 have mikes on those tables?

1 MS. BRANCH: Apologies. I believe  
2 defendant-intervenors are going to show a video of some of  
3 Senator Dance's statements that she made on the House floor.  
4 The video is in the record, both the video itself and a  
5 transcript of what she said on the video. Those videos were  
6 played at the last trial. They are cumulative testimony and,  
7 respectfully, a waste of time. We have a finite time in which  
8 to try this trial, and --

9 JUDGE PAYNE: Your objection is duplication of  
10 testimony.

11 MS. BRANCH: Yes, not necessary.

12 JUDGE PAYNE: Okay. Why do you need to play that  
13 again for Delegate Jones?

14 MS. McKNIGHT: It's not exactly true that this has  
15 been played. This video has not been played before.

16 JUDGE PAYNE: Let's assume that. The transcript is  
17 in the record, she said, and you don't quarrel with that. We  
18 can read it. Why is it important to you to play it in the  
19 presence of the witness?

20 MS. McKNIGHT: We would like to understand whether  
21 the testimony -- if her beliefs are accurate, if it accurately  
22 captures what she believed at the time. It contradicts some of  
23 what plaintiffs are asserting in this case, and we think it's  
24 important to show the demonstrative of the video. It is only  
25 three minutes long.

1           The judges are welcome to assess the credibility of  
2     the video, and Senator Dance is here now to answer any  
3     questions about it. They also have opportunity on redirect to  
4     question her about it.

5           JUDGE PAYNE: Overruled. But it does open up the  
6     door to what Ms. Branch was attempting to do and I asked her  
7     not to do, so she can follow that up on redirect examination.  
8     All right, play it, please.

9           MS. McKNIGHT: Your Honor, one more point so the  
10    record is clear. I understand you overruled the objection. We  
11    believe the Supreme Court is interested in justifications that  
12    are not post hoc, meaning the Supreme Court is interested in  
13    seeing the record at the time, and we believe this is the best  
14    way to show the Court what that record is.

15          JUDGE PAYNE: Judge Merhige asked me one time was I  
16    trying to snatch defeat from the jaws of victory.

17          MS. McKNIGHT: I understand, Your Honor. This is  
18    Plaintiff's Exhibit 34.

19  
20           (Video played.)

21  
22    Q     Senator Dance, that was you speaking; correct?

23    A     Yes.

24    Q     And the clip is an accurate recording of what you said; is  
25    that right?



1 A On that day, yes.

2 Q And you didn't say anything that was untrue; correct?

3 A No.

4 MS. McKNIGHT: Thank you. No further questions.

5 JUDGE PAYNE: Any redirect?

6 MS. BRANCH: Yes, Your Honor.

7

8 REDIRECT EXAMINATION

9 BY MS. BRANCH:

10 Q Senator Dance, defendant-intervenors just played a video  
11 of you on the House floor; right?

12 A Yes.

13 Q And there you talked about needing a 55 percent black  
14 voting-age population?

15 A Yes.

16 Q Why?

17 A I was indoctrinated at that time to the 55 percent, those  
18 criteria that we had to have to get this done, and that  
19 criteria had been followed, and then I wanted -- then I was in  
20 my team mode of explaining enough, providing enough information  
21 to ensure my colleagues understood what we had gone through,  
22 they had opportunities to give input and learn, make changes  
23 before the final vote, and this is what we would be presenting.

24 Q Did you see it as part of your role as a member of the  
25 six-person subcommittee on redistricting to sell the

1 redistricting plan to members of your caucus?

2 A Yes, I did, because I was told that when we locked into  
3 this, the Department of Justice would have to be interviewed,  
4 everything. Since this is a document, this is our document,  
5 the six of us, this is what we take, and this is what we  
6 present to the General Assembly and fight it in the Department  
7 of Justice. Those are a solid ground to work with.

8 Q What made you think that 55 percent, clear the bar, was a  
9 good number?

10 A I worked with the software. It's intimidating at first.  
11 Took me a couple weeks before I was brave enough to get into  
12 the war room, as I called it, to actually move and see exactly  
13 how proficient the information was, how it dealt with just --  
14 not just the age of the person but it dealt with those of the  
15 voting age.

16 It could tell you in a little small segment that here's  
17 what you are. I knew that I was of the minority party. I was  
18 assured from this 55 percent that the 12 positions were there,  
19 and then it expanded to other Democrats for those areas, and it  
20 was political. It was a point of what could you get from this.

21 As far as those 12 areas, they were set. I thought that  
22 55 percent, they were going to pass the Department of Justice,  
23 they'd had a chance to talk with the chair who had the full  
24 map, he had his own software in his office, and that he  
25 listened, and this is what we were going to have and this is

1 the best deal we were going to get, because we had had a chance  
2 to at least share. Whether we got what we wanted or not, we at  
3 least had an opportunity to share.

4 Q Who was the first person who ever mentioned 55 percent  
5 black voting-age population to you?

6 A Our chair of that subcommittee, and that was Delegate  
7 Jones.

8 Q Did you ever do any analysis to show that 55 percent black  
9 voting-age population was needed in any of the black districts?

10 A I accepted 55 percent as gospel.

11 Q Did Delegate Jones ever show you any analysis that  
12 55 percent was needed?

13 A No, I accepted it as gospel.

14 Q Did he show you any expert reports?

15 A No.

16 JUDGE PAYNE: I think she accepted it as the gospel.

17 MS. BRANCH: Understood. Thank you, Your Honor.

18 Q And you testified earlier about Alvin Blaha who lived in  
19 your district, and he lived in the New Hope precinct; is that  
20 right?

21 A Yes.

22 Q Could the map drawers have split the New Hope precinct to  
23 include Mr. Blaha's home in your district without including the  
24 entire precinct?

25 A Sure, yes.

1 Q Finally, I'd like to pull up -- direct your attention to  
2 Plaintiffs' Exhibit 33, page 43, and this is a transcript of  
3 your House floor statement from April 4th, 2011. This is  
4 actually part of the video that was just shown, but I'm just  
5 going to focus --

6 A Can you make it larger, please.

7 Q -- on three lines of this. Starting on line 21, you said,  
8 "In order to maintain those 12 districts, it required some  
9 movement and sometimes" -- this falls on to the next page --  
10 "not perfect adjustments between precincts. There might have  
11 been some split areas." Do you see that?

12 A Yes.

13 Q And when you are referencing split areas, would Ward 7 in  
14 your district be one of those?

15 A Yes.

16 Q And Ward 7, why was that split?

17 A Because I had to pick up some African Americans, so I  
18 got -- I didn't get enough, so the two wards that they gave me  
19 in Hopewell wasn't enough, so I had to get out of seven.

20 Q Who was Ward 7 split with?

21 A Delegate Riley Ingram.

22 Q Is he a Republican?

23 A Yes.

24 Q Is he white?

25 A Yes.

1 Q And which part of Ward 7 was he given?

2 A Predominantly Euro-American or white segment.

3 MS. BRANCH: No further questions. Thank you.

4 JUDGE PAYNE: Can she be excused permanently?

5 MS. BRANCH: We'll reserve the right to call her  
6 during our rebuttal case.

7 JUDGE PAYNE: You might need to be called back,  
8 Senator Dance, so you need to be available. Do you agree to  
9 come back when you're called, to make yourself available at  
10 their call?

11 THE WITNESS: I do.

12 JUDGE PAYNE: Please don't discuss your testimony  
13 with anybody but the lawyers in the case.

14 THE WITNESS: Thank you, sir.

15 JUDGE PAYNE: All right. Next witness.

16 MR. HAMILTON: At this point, Your Honors, we call  
17 Dr. Jonathan Rodden.

18  
19 **JONATHAN A. RODDEN,**  
20 a witness, called at the instance of the plaintiffs, having  
21 been first duly sworn, testified as follows:

22  
23 MR. HAMILTON: Your Honor, I would point out, there  
24 was one delegate witness, Ward Armstrong, who we have decided,  
25 in the interests of efficient presentation of testimony, not to

1 call, and the intervenors have released him from his subpoena.  
2 So we're running on schedule.

3

4 DIRECT EXAMINATION

5 BY MR. HAMILTON:

6 Q Good morning, Dr. Rodden. Can you please state your full  
7 name for the record.

8 A Jonathan Andrew Rodden, R-o-d-d-e-n.

9 Q And, thank you. You are an expert for the plaintiffs in  
10 this case; is that right?

11 A Yes.

12 Q And you've prepared a couple of reports and are here this  
13 morning to testify about them; is that right?

14 A Yes.

15 Q The Court has already had an opportunity to review those  
16 reports, but let me ask you briefly a couple of questions about  
17 your expertise and the focus of your scholarly work. Where are  
18 you employed, Dr. Rodden?

19 A I'm professor of political science at Stanford University  
20 and a senior fellow in the Hoover Institution at Stanford.

21 Q What is the Hoover Institution?

22 A It's a research-oriented group of scholars in economics,  
23 political science, and some in history, also some individuals  
24 who served in government in the past.

25 Q And, Dr. Rodden, what is the Stanford Spacial Social

1 Science Lab?

2 A This is a group of scholars and graduate students that I  
3 have assembled a few years ago and put together some equipment  
4 and some data, and we've been working together on a number of  
5 projects using geo-spatial data from around the world to assess  
6 a variety of topics across the social sciences but focusing in  
7 particular on economic -- on elections and voting behavior, in  
8 particular in the United States.

9 Q So can you describe a little bit about -- just briefly  
10 about the political and voting data that you use and how you  
11 use it in the Spacial Social Science Lab?

12 A Yes. We've been collecting a lot of data at the level of  
13 precincts or voting tabulation districts from around the world  
14 but especially in the United States. We put together the first  
15 complete nationwide precinct-level data set for the 2008  
16 election, created an online tool that other scholars can  
17 download and use those data as part of the redistricting plans.

18 So we've fed in a lot of data to the analysis, study of  
19 redistricting around the country, and we continue to produce  
20 precinct-level data sets for other scholars to use, and, also,  
21 we've created online visualization tools for those data. We  
22 also have assembled a lot of individual-level data using voter  
23 files from different states.

24 Q Your résumé is attached to your report; is that right?

25 A Yes.

1 Q And could you just tell us what degrees you hold and from  
2 what institutions?

3 A Yes. My undergraduate degree was from University of  
4 Michigan in political science. I then received a Ph.D. from  
5 Yale University in political science. I was a Fulbright  
6 Scholar at the University of Leipzig in Germany.

7 Q And can you give us a brief overview of the positions  
8 you've held since you received your Ph.D. from Yale?

9 JUDGE PAYNE: Do you accept him as an expert -- what  
10 are you offering him in, Mr. Hamilton, what area?

11 MR. HAMILTON: I am offering him as an expert in the  
12 field of geo-spatial data analysis and its application to the  
13 field of redistricting pursuant to Rule 702.

14 JUDGE PAYNE: Geo-spatial data analysis and its role  
15 in --

16 MR. HAMILTON: And its application to the field of  
17 redistricting.

18 JUDGE PAYNE: Is he accepted as an expert in that  
19 area, or do you challenge him?

20 MR. BRADEN: I think we do challenge him, Your Honor.

21 JUDGE PAYNE: Let him finish his examination, and  
22 then you can do the voir dire. All right, Mr. Hamilton, excuse  
23 me.

24 MR. HAMILTON: Thank you, Your Honor.

25 Q So let's start with the overview of the positions you've



1 held since you received your Ph.D. from Yale.

2 A Yes. I took my first job as an assistant professor at the  
3 Massachusetts Institute of Technology in the political science  
4 department. I then was promoted to associate professor without  
5 tenure. I was given the title of the Ford Chair, Ford  
6 associate professor of political science. I then received  
7 tenure at MIT.

8 After that, I was named as a fellow at the Center for  
9 Advanced Studies in Behavioral Sciences at Stanford University.  
10 That was a year-long visiting position. During that time, I  
11 was offered a job to stay at Stanford and join the faculty as a  
12 full professor, and I've been a full professor at Stanford  
13 since then and after that joined the Hoover Institution.

14 Q What's the focus of your scholarly work?

15 A I've worked on a number of things over the years, but I've  
16 really been focusing in recent years on the analysis of  
17 geo-spatial data, in particular related to elections, political  
18 geography. I'm doing a lot of work on representation. A lot  
19 of that work has do with the construction of districts and the  
20 representation that flows from redistricting.

21 Q Okay, let me stop you there. Can you explain what spatial  
22 data science is?

23 A This is a field that has deep roots that really goes back  
24 to the 1800s. It's a field in which we collect data that has a  
25 geo-spatial component, by which I mean we can map the data. So

1 we have something like boundaries, or we have something like  
2 X/Y coordinates for individuals, and we're able to assemble  
3 data at different levels of aggregation by the use of  
4 geography.

5 Q Does it have an application in the field of epidemiology,  
6 for example, tracking diseases or locating the causes of  
7 disease?

8 A This is really where the field begins. So it started, in  
9 fact, with a generation of a map of the cholera outbreak in  
10 1850 in London. This is how John Snow, by drawing a map,  
11 mapping out the deaths from cholera in London was able to  
12 discover where the -- was able to discover a cluster of deaths,  
13 and that's really -- view of the first moment of the field of  
14 epidemiology.

15 Q So John Snow plotted the locations of deaths across a map  
16 of the city of London; is that right?

17 A Yes, that's right. Discovered a cluster, a clear cluster  
18 of death.

19 Q And then over the top of that map, what did he overlay?

20 A Overlaid a number of things, but upon looking at them, saw  
21 a map -- put together a map of water facilities, water pumps.

22 Q And what was the correlation between the deaths and the  
23 locations of the water pumps?

24 A Found that the deaths were quite clustered around one of  
25 the water pumps.

1 Q As a result, what did he do? What did the city  
2 authorities do?

3 A They removed the handle from the pump.

4 Q What effect did that have on the incidence of cholera  
5 deaths in London?

6 A It was a sudden stop in the cholera epidemic.

7 Q Is that an example of the visualization of data,  
8 geo-spatial data and its application?

9 A Yes, and it's something similar to what we've been doing  
10 ever since then. I also work -- separately, some of my work is  
11 in epidemiology, and it's related -- I collaborate with people  
12 in the medical school and visualizing the data in space and  
13 understanding spatial processes of disease propagation and  
14 things likes that.

15 That's a big part of what we do in what we call spatial  
16 data science, and the work on elections and using  
17 precinct-level election data is a part of that.

18 Q Do you know Dr. Edward Tufte from Yale University? Are  
19 you familiar with his work?

20 A He was one of my professors at Yale.

21 Q Has he published a number of books on the visualization of  
22 quantitative information?

23 A Yes.

24 Q That's the same field?

25 A Yes. It's the idea that there's a lot we can learn about

1 the world by starting with the -- a map of a social phenomenon  
2 and then going from there and adding layers and trying to learn  
3 more about what's happening.

4 Q Now, in the field of election-related litigation or  
5 redistricting-related litigation, have you been accepted as an  
6 expert witness in other courts?

7 A Yes.

8 Q In state courts?

9 A Yes.

10 Q In federal courts?

11 A Yes.

12 Q Can you give us a couple examples.

13 A I worked as an expert witness in a case related to  
14 redistricting that had components of both partisan and racial  
15 gerrymandering.

16 Q Let me stop you there. What state?

17 A Yes, that was in the state of Florida, and it was related  
18 to an amendment to the Florida constitution about  
19 gerrymandering.

20 Q That was in state court, and you were accepted as an  
21 expert witness and you testified in that trial?

22 A Yes.

23 Q Have you testified -- been accepted as an expert witness  
24 in this field in federal court?

25 A Yes. I worked for the defense in a case related to the

1 Voting Rights Act and also related to redistricting and the  
2 Ferguson-Florissant school district in the district court in  
3 Missouri.

4 JUDGE PAYNE: In federal court in Missouri, did you  
5 say?

6 THE WITNESS: Yes.

7 Q How about here in Virginia, have you been accepted as an  
8 expert in the Eastern District of Virginia?

9 A Yes. In fact, it was in this courtroom. That was in the  
10 Lee case and had to do with the voter ID.

11 Q Do you recall who the presiding judge was?

12 A That was Judge Hudson.

13 Q Has your work been cited or discussed in the United States  
14 Supreme Court?

15 A Yes. In fact, last week. I have been working, as I've  
16 been describing, doing a lot of work on geo-spatial analysis of  
17 redistricting, had written a number of papers with a colleague  
18 about how to disentangle partisan gerrymandering and the impact  
19 of geography, and, of course, in Wisconsin, this is a very  
20 important question.

21 I wrote a number of papers that were cited by both parties  
22 in the case, wrote a brief that was cited by the justices,  
23 several of the justices in the oral arguments last week.

24 MR. HAMILTON: All right. Thank you. Your Honor, we  
25 would proffer Dr. Rodden as an expert as described earlier

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1 pursuant to Rule 702. He is a witness qualified as an expert  
2 by knowledge, skill, experience, and training. I believe his  
3 scientific and technical knowledge will help the trier of fact,  
4 and, of course, the Courts understand the evidence and  
5 determine the relationship.

6 We have a number of maps that are already in evidence  
7 that display in just static shaded terms the relative racial  
8 composition of the various districts. Dr. Rodden will be  
9 presenting density maps which are a familiar tool and common  
10 tool in this field of expertise, and it will help illustrate  
11 the actual division of the white-from-black populations at a  
12 granular and, of course, at a macro level as well.

13 Ironically, those exhibits are already admitted  
14 before the Court. They're already a part of the record. They  
15 were introduced with no objection, so I find it curious that  
16 there's an objection to the testimony of the author of the  
17 reports that have already been admitted without objection. So  
18 I think the objection may have already been waived by the  
19 admission of the underlying expert reports.

20 JUDGE PAYNE: Mr. Braden.

21  
22 VOIR DIRE EXAMINATION

23 BY MR. BRADEN:

24 Q Dr. Rodden, have you ever drafted a plan at the request of  
25 any state legislature?

1 A To address a state legislature?

2 Q Have you ever drafted a plan that you provided to a state  
3 legislature?

4 A No.

5 Q Have you ever been requested by a state legislature to  
6 ever draft a plan?

7 A Not by a state legislature, no.

8 Q Have you ever drafted a complete legislative plan for  
9 Virginia?

10 A Yes, I believe I have.

11 Q You have? Have you -- did you provide a copy to the Court  
12 or to the parties?

13 A It was not for the House of Delegates. This is part of  
14 other work. I've drawn Congressional maps in all the states.

15 JUDGE PAYNE: For here?

16 THE WITNESS: I'm sorry?

17 JUDGE PAYNE: For this Court here?

18 THE WITNESS: Not for the Court. In my academic  
19 work, I've drawn a number of redistricting plans, but this has  
20 not been done for submission and for use in -- for  
21 implementation. This is part of my academic work on  
22 redistricting.

23 Q So have you ever drafted a plan that's been considered by  
24 a legislative chamber?

25 A No.

1 Q Have you ever drafted a plan that's been considered by  
2 city council?

3 A No.

4 Q Have you ever drafted a plan that's ever been considered  
5 by any political body?

6 A No.

7 Q Have you ever been hired by a legislature to advise them  
8 on the redistricting process?

9 A No.

10 Q Have you ever been hired by a local jurisdiction to advise  
11 on a redistricting process?

12 A As part of my work in the Ferguson-Florissant school  
13 district case, there -- we generated -- my coauthor and I  
14 generated a number of potential single-member district school  
15 board plans, but those were not -- those were not implemented  
16 in that case. It's still ongoing, in fact.

17 Q And, in fact, you testified for the side that lost at the  
18 district court level?

19 A Yes.

20 Q Have you ever been hired as a master to draft any type of  
21 redistricting plan?

22 A No, I was recently asked to do that work by a federal  
23 judge, but the schedule, in part because of this case, did not  
24 work out, and so I'm not currently working on a map.

25 JUDGE PAYNE: So the answer is, you have not served



1 as a special master to help draw maps.

2 THE WITNESS: I have not.

3 Q Have you ever been even employed in any capacity by a  
4 state legislature?

5 A No.

6 Q Or even been an intern in a legislative chamber?

7 A No.

8 Q Ever worked for any elected officials?

9 A No.

10 Q Ever worked for any political campaign?

11 A No.

12 Q Worked for any political party?

13 A No.

14 Q Ever worked on a preclearance submission to the DOJ?

15 A No.

16 Q Ever worked for the voting rights section of the  
17 Department of Justice?

18 A No.

19 Q Have you ever been a fact witness in a redistricting case?

20 A No.

21 Q Does your report that you submitted in this case bear any  
22 resemblance to the expert reports you've submitted in other  
23 cases?

24 A I think so.

25 Q So in other cases, you speculated about the motives of the

1 legislature in drafting the plan?

2 A That's not how I would interpret what I've done in this  
3 report. I did not speculate about the motives of the  
4 individuals drawing the plan. I laid out for the Court what  
5 decisions were made, in parts very descriptive fashion, so that  
6 the Court could understand how the drawers of the plan went  
7 about achieving the 55 percent target that they had set out for  
8 themselves.

9 Q And your position is, to read your report, "This report  
10 explains the nuts and bolts of how the legislature achieved the  
11 55 percent racial target."

12 A Yes.

13 Q So you purport to explain the nuts and bolts?

14 A I show visually and descriptively how the lines were  
15 moved, how VTDs were moved, what were the implications of those  
16 moves. I demonstrate how VTDs were split and what was the  
17 implication of those splits, all of which I believe is the kind  
18 of information that the Supreme Court appeared to be asking for  
19 when calling for a holistic analysis --

20 Q Before writing your report, did you interview any members  
21 of the legislature?

22 A No.

23 Q Any staff members?

24 A No.

25 Q Talk to any Virginia elected officials?

1 A No.

2 Q Any Virginia appointed officials?

3 A No.

4 Q Have you ever lived in Virginia?

5 A No.

6 Q Did you read any of the floor debates?

7 A I've -- I think I've testified before, I saw some of that  
8 when I first started the case to try to familiarize myself with  
9 it, but I have not read in detail the floor debates.

10 Q Did you watch any of the videos of the floor debates other  
11 than what you saw today?

12 A I have now, but not before.

13 Q Did you go to any of the hearings?

14 A No.

15 Q Did you interview anyone who testified at any of the  
16 hearings?

17 A No.

18 MR. BRADEN: Your Honor, if you look at the report  
19 that was submitted in this case, it is based upon simply him  
20 speculating on legislative desires, and he's not qualified to  
21 do that since he lacks a background in that area.

22 Q Have you ever written anything about the legislative  
23 process?

24 A As a political scientist, yes.

25 Q You've talked about state legislation. What publications

1 would that be in?

2 A Have I talked about --

3 Q In your publications, in your peer-reviewed articles, do  
4 you have discussions of the state legislative process?

5 A I'm quite sure that there are some discussions in the  
6 context of redistricting with the legislative process behind  
7 it, yes.

8 Q Do you purport to be an expert on legislative process in  
9 Virginia?

10 A No, sir.

11 MR. BRADEN: I think the Court should reject his  
12 testimony.

13 JUDGE PAYNE: What's the effect -- I'm sorry. I was  
14 making a note. Mr. Braden, what's the effect of your having  
15 not objected to his report into evidence as it pertains to his  
16 ability to testify about the report?

17 MR. BRADEN: That's an interesting question, Your  
18 Honor. We may have, in fact, waived it. We don't think that  
19 we necessarily waived it. We have no problems with the Court  
20 seeing the maps, but if we're being asked whether or not we  
21 believe this gentleman is an expert, we most certainly do not.  
22 He lacks the experience to testify as to the motives and  
23 actions of the legislative --

24 JUDGE PAYNE: He can't testify to motives anyway.  
25 That's not his business. That's not the topic of expert

1 testimony and won't help the trier of fact, and I hope they're  
2 not going to offer that. I didn't sense from Mr. Hamilton's  
3 remarks he was, but -- anything else that you have to say?

4 MR. BRADEN: No, Your Honor.

5 JUDGE PAYNE: Anything else you have to say, Mr.  
6 Hamilton?

7 MR. HAMILTON: Yes, Your Honor. First of all,  
8 virtually the entire voir dire examination that we just heard,  
9 if that's a basis for excluding an expert, then most of the  
10 experts that have been admitted across the courts in all of  
11 these redistricting cases would have been rejected because  
12 they'll all academics.

13 Of course, they haven't been employed by  
14 legislatures, and most of them haven't drawn maps themselves.  
15 That hardly makes their testimony not helpful within the  
16 meaning of Rule 702.

17 Second, I simply don't understand the position that  
18 an expert could submit a report which usually, of course, is  
19 not admissible, but the testimony which usually is admissible  
20 can't be. It's exactly the reverse. I applaud intervenors for  
21 stipulating to the admission of not one but two of Dr. Rodden's  
22 reports. It helps speed along the process of this case.

23 We've stipulated to the admission of their reports  
24 both in 2015 and in 2017. So I think that the argument here is  
25 clever, it's a great demonstration of a technique of trying to

1 get a little bit of the cross in in the middle of the  
2 testimony, but I think the argument should be rejected. It's  
3 been waived, and Rule 702 provides ample authority for the  
4 Court to admit it.

5 JUDGE PAYNE: As Judge Williams once said at a  
6 juncture similar to this in a trial, let us chew on this over  
7 lunch, and we will resume in 45 minutes.

8 MR. HAMILTON: Thank you.

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10 (Luncheon recess.)

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1 JUDGE PAYNE: We've determined that the  
2 objection is overruled. The witness will be accepted as  
3 an expert in the tendered area, geo-spatial data analysis  
4 and its application to redistricting. However, I think we  
5 are all of the view that we do not need the assistance of  
6 any expert in giving us the motivations and intent of  
7 anybody.

8 MR. HAMILTON: Of course not, Your Honor.

9 JUDGE PAYNE: And I will say that I understand  
10 Mr. Brady's concern because in the report, there's a fair  
11 amount of gratuitous comment along those lines that is not  
12 particularly helpful in analyzing anything. So we'll --  
13 if we'll keep that out, I would appreciate it. All of us  
14 will.

15 MR. HAMILTON: I will do my best, Your Honor.

16 JUDGE PAYNE: And, Dr. Rodden, you need to  
17 remember that admonition, too --

18 THE WITNESS: Certainly.

19 JUDGE PAYNE: -- and not gravitate into it. All  
20 right.

21 MR. HAMILTON: May I proceed, Your Honor?

22 JUDGE PAYNE: Please.

23 BY MR. HAMILTON:

24 Q Dr. Rodden, let me direct your attention to  
25 Plaintiffs' Exhibit Number 69. It's in the binders in

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1 front of you. Is this a copy of your initial report?

2 A Yes.

3 Q And Exhibit 70, is that a copy of a reply report?

4 A Yes.

5 Q Now, do you have working copies of those two exhibits  
6 in front of you?

7 A Yes.

8 Q Is that identical to the admitted trial exhibits?

9 A Yes.

10 Q Is it easier to work with the smaller notebook?

11 A Yes.

12 Q Okay. Now, do you also have Table 4 from  
13 Dr. Ansolabehere's expert report in this matter, which is  
14 Plaintiffs' Exhibit 50, page 72? And what is that?

15 A This is simply a table of population and racial  
16 composition of the challenged districts and --

17 Q Is it helpful to have that with you as you testify  
18 here today?

19 A Yes.

20 Q Okay. Let's look at your initial report first. Can  
21 you explain what you were asked to do?

22 A Yes. I was simply asked to assess whether race was  
23 the predominant factor in drawing the 12 current districts  
24 that are being challenged for the Virginia House of  
25 Delegates.



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1 Q And how did you approach that question?

2 A Well, I collected and used all the available  
3 geo-spatial data to provide an analysis of the  
4 construction of those districts. For each of the regions  
5 that contain the 12 districts at hand, I examined whether  
6 it was plausible that we would see the final shape of  
7 those districts without extensive use of race being used  
8 as the dominant consideration in drawing the districts.

9 Q And what was your conclusion after looking at these  
10 12 districts, sir?

11 A That race was the predominant factor in drawing those  
12 districts.

13 Q All right. Before we walk through how you reached  
14 that conclusion, Dr. Rodden, let me ask you right from the  
15 beginning, was any part of your analysis an examination of  
16 whether this plan was drawn with racially discriminatory  
17 intent?

18 A No. That's not part of my analysis.

19 Q Okay. You were only looking at whether race was the  
20 predominant factor in the drawing of the map; is that  
21 right?

22 A Correct.

23 Q Okay. So let's move to the substance of your  
24 analysis. There are 11 House districts at issue in this  
25 litigation. Did you approach your study of these

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1 districts in a -- on a regional basis?

2 A Yes. I divided the study into two regions, the first  
3 of which was Richmond but also extending to the tri-city  
4 area, because all those districts touch one another and,  
5 as I try to describe in the report, every move that's made  
6 in one has an effect on the other. So I take that region  
7 as a whole --

8 Q Okay. And is there a second region that you examined  
9 as well?

10 A Yes. And then the Tidewater region I also treat as a  
11 separate analysis.

12 Q Did you consider the implications of the use of an  
13 expressed racial target of 55 percent black voting age  
14 population?

15 A Yes. In some respects, that was the start point for  
16 my analysis. That had already been determined, and the  
17 first thing I was doing in my analysis is trying to  
18 understand the implications of using that target.

19 Q Is it your opinion that every districting decision  
20 had to be done exactly the way it was done in order to  
21 achieve that 55 percent goal?

22 A No. Of course not.

23 Q There are alternatives?

24 A Yes. And what I try to describe in the report is  
25 that there are -- there are parts of the -- of these

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1 regions where, in fact, the 55 percent target was very  
2 constraining, and it really was quite difficult to reach  
3 the target, and there are others where it was somewhat  
4 less so.

5 But in most instances, yes, there are other ways to  
6 get there, and my job was to describe how the VTDs and  
7 blocked were moved in order to get there.

8 Q So let's look first --

9 JUDGE PAYNE: In order to get where?

10 THE WITNESS: To get to the 55 percent target.

11 BY MR. HAMILTON:

12 Q Let's look first at the Richmond and tri-city area.  
13 I believe the discussion begins on page 9 of your report;  
14 is that right?

15 A Yes.

16 Q Okay. And what House districts are in this area?

17 A Seventy-one, 69, 70, 74 and 63.

18 Q So let me direct your attention to page 10 of your  
19 report, Figure 1, and I think we can put it here on the  
20 screen. What is this map? Can you describe what it is  
21 and how it's used?

22 A Yes. This is a dot density map, and it's something  
23 that I use extensively in my reports. This is one that  
24 zooms out to the entire Richmond and tri-city area. And  
25 what I'm doing in creating this map is taking census data

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1 at the level of census blocks and creating dots that  
2 capture individuals from the census data; in this case,  
3 voting age individuals. And I'm representing the race of  
4 those individuals with the color of the dot.

5 And in this particular map, one dot captures ten  
6 individuals. And we'll see some maps later in the report  
7 in which I zoom in further and one dot might capture five  
8 individuals, or if we zoom in very, very fine grained  
9 analysis, we'll see one dot corresponding to one  
10 individual.

11 And I want to clarify that these are not based on  
12 individual level data. So we don't know the addresses of  
13 the individuals. We know the blocks, and the blocks are  
14 very small, maybe something like a hundred people.

15 Q This is a census block?

16 A Yes.

17 Q And each voting tabulation district is composed of a  
18 number of census blocks; is that right?

19 A Yes.

20 Q Okay. And a voting tabulation district is similar to  
21 a precinct, at least in Virginia?

22 A Yes. At this time in Virginia it is.

23 Q Okay. Is this a common tool in the field of  
24 geo-spacial analysis?

25 A Yes. A dot density map is a way to show a couple of

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1 important things at the same time. So we're showing not  
2 only the racial composition of an area, but we're showing  
3 the population density of that area. And we're showing  
4 the precise location of individuals within a VTD, or  
5 within a district. And that can be very important beyond  
6 just kind of treating the VTD as a whole. Because as was  
7 described I think by a couple of fact witnesses, many  
8 census blocks are unpopulated. So we have census blocks  
9 that are --

10 JUDGE PAYNE: You're at the point where you're  
11 talking beyond the question, and I think we'll get where  
12 we're going faster if Mr. Hamilton asks a question, you  
13 answer just the question that you're asked. If he wants  
14 more, that will be fine.

15 THE WITNESS: Okay. Thank you.

16 JUDGE PAYNE: But before you do that, you're  
17 saying that you used the census block and you took the  
18 data from the census; is that right?

19 THE WITNESS: Yes.

20 JUDGE PAYNE: And a census block is what?

21 THE WITNESS: A census black is just what it  
22 sounds like. In a city, just think of a city block. So  
23 it's just very small geography that covers one block. And  
24 so it can be often fewer than a hundred people. But what  
25 sometimes happens is there are many blocks that are

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1 unpopulated.

2 JUDGE PAYNE: Or thousands of people if there  
3 were highrises?

4 THE WITNESS: If there were highrises, it might  
5 be a thousand.

6 JUDGE PAYNE: And you got the race from the  
7 census data in each block?

8 THE WITNESS: Yes.

9 JUDGE PAYNE: And then you plotted on this  
10 exhibit where the black and the white races were?

11 THE WITNESS: Yes. And so we don't see the  
12 block boundaries on this map because that would take  
13 over -- all you would see is a tangle of boundaries.  
14 But we can think of -- every time we see one of these  
15 maps, we can think about all these dots are placed inside  
16 the boundaries of the block. That's how they get placed  
17 where they are.

18 Q So maybe I can ask a couple of clarifying questions.  
19 When we're at the census block level, you've got data  
20 that's reported from the United States Census, correct?

21 A Yes.

22 Q And that data includes population?

23 A Yes.

24 Q And it includes the race and ethnicity of the  
25 individuals who live within that block?

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1 A Yes.

2 Q But it doesn't tell you where each individual  
3 actually lives?

4 A Correct.

5 Q So let's say in your -- we've got a city -- a census  
6 block with a hundred people in it. How do you plot the  
7 location of those people since we don't know exactly where  
8 they live, those hundred people within that census block?  
9 How do you deal with that?

10 A So those dots are randomly placed within the census  
11 block because --

12 Q Is the white -- are the white dots treated any  
13 differently from the black dots?

14 A No. They're both randomly placed within the block.

15 Q Can you explain why that's useful?

16 A Well, yes. Because when we're looking at a map like  
17 this, when we get down -- when we have the individuals  
18 placed within the blocks, we can see not just where --  
19 where the -- for instance, the African-American voting  
20 percentage is high. That's interesting, but it's more  
21 interesting to know how many people are there. So we  
22 might have a place where the African-American voting age  
23 population is 80 percent, but it might be a place that is  
24 largely unpopulated that only has a couple of -- a little  
25 sliver of population. And these maps will show us where

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1 the population is located, and the density of the  
2 population.

3 JUDGE PAYNE: Including age population?

4 THE WITNESS: Yes. All these maps will be  
5 voting age population.

6 JUDGE PAYNE: Not the voting population?

7 THE WITNESS: Correct.

8 Q All right. So let's -- so this here, we're looking  
9 just at the Richmond area, and then you've plotted the --  
10 in a very general level, some geographic features like  
11 cities and rivers. And then over the top of that, we see  
12 dot density; is that right?

13 A Yes.

14 Q So in just a sentence or two, what does this overview  
15 tell us as we try and draw -- or what conclusions can the  
16 Court draw from -- from this map at this high level of the  
17 whole region?

18 A It simply gives us an overview of where white and  
19 African-American residents of the region reside. And it  
20 gives us kind of a preview of what kinds of things have to  
21 be done in order to create -- in this case, six -- well,  
22 we'll really be talking about five 55 percent  
23 African-American districts. So the starting point is to  
24 see that there is an African-American population in the  
25 northeast of Richmond and then on the south side of the



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1 river, and then there is, of course, a concentration  
2 around Petersburg and there is a much smaller  
3 concentration around Hopewell, and there is a -- a  
4 surrounding rural African-American over in Charles City  
5 County and, as was discussed earlier, down in Dinwiddie.

6 Q Okay. Maybe we can go to the next slide. This is  
7 Exhibit 2 from your report. Can you explain what this is?

8 A This simply overlays on that geography the lines of  
9 the benchmark plan.

10 Q All right. And if we go to the Figure 3 on page 14  
11 of your report, what is this?

12 A This overlays the lines of HB 5005 in black, and the  
13 challenged districts are in bold.

14 Q Okay. And this is as adopted in HB 505 -- 5005?

15 A Yes.

16 Q So if we go back and forth between these two, we can  
17 see how the map changed from the benchmark to the adopted  
18 plan; is that right?

19 A Yes. It brings to life some of the maps that were  
20 already discussed earlier today. We see the split of  
21 Dinwiddie County, and we see the movement of Hopewell from  
22 74 to 63. We see the expansion of --

23 Q All right. Why don't I stop you there and let me  
24 direct your attention to District 71. Let's start there.  
25 It's Figure 4 on page 18 in the next slide. I think the

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1 discussion starts on page 15 of your report. This is  
2 Jennifer McClellan's district; is that right?

3 A Yes.

4 MR. HAMILTON: And, Your Honors, if it's easier,  
5 there's a hard copy -- there's a binder with hard copy  
6 paper versions of all these maps as an illustrative  
7 exhibit that's been provided to you. I believe they are  
8 on the bench, or perhaps in the bookshelves behind you.

9 BY MR. HAMILTON:

10 Q So --

11 JUDGE PAYNE: Are they bigger than the ones that  
12 are in his report?

13 MR. HAMILTON: Yes.

14 A It might be helpful to zoom in on these a bit closer,  
15 if that's possible.

16 Q Well, not quite yet.

17 A Okay.

18 JUDGE PAYNE: Do you want yours?

19 JUDGE KEENAN: I think I'm okay. Thank you.

20 JUDGE PAYNE: All right.

21 Q All right. So the incumbent here was Jennifer  
22 McClellan. This is downtown Richmond; is that right?

23 A Yes.

24 Q Is this courthouse in this district?

25 A Yes.

Rodden - Direct

1 Q So what was the racial and population composition of  
2 this district at the time of the redistricting?

3 A Yes. This was a district that was well short of the  
4 55 percent African-American voting age population target  
5 at the time of the benchmark district. It was  
6 46.3 percent African-American, and it was also  
7 underpopulated. So it needed to gain around 6000 people.

8 Q And had Delegate McClellan -- so is it 46 percent  
9 BVAP? Is that what you said?

10 A Yes. A little over that.

11 Q Had Delegate McClellan had any trouble getting  
12 reelected in this district?

13 A No.

14 Q Did you examine her election results?

15 A Yes. There's a nice website that has all of the  
16 precinct level results going back historically. So I did  
17 analyze those.

18 Q And what was her margin of victory in the most -- in  
19 the 2009 election just before redistricting?

20 A She received 82 percent of the vote in that one.

21 Q So looking at Figure 4, which is on the screen, this  
22 is House District 71 in a dot density format showing the  
23 VTDs in this area?

24 A Yes.

25 Q So we're going to click through several slides here.

Rodden - Direct

1 So the next slide, this is the same map but with all of  
2 the data stripped out of it, just showing the VTDs in the  
3 area; is that right?

4 A Yes.

5 Q And then the next slide. This is now showing the  
6 racial distribution population within the same area?

7 A Yes. And the county boundary is in green as well.

8 Q All right. That's the green line?

9 A And then --

10 JUDGE PAYNE: Which one are you talking about?

11 MR. HAMILTON: It's the illustrative exhibit --

12 JUDGE PAYNE: Which Figure 6? Figure 7? What?

13 MR. HAMILTON: It's not -- this is an  
14 illustrative exhibit that we've created by taking  
15 Figure -- the original figure out of his report, which was  
16 Figure 4, and then stripping it for the purposes of  
17 electronic display It's also in your hard copy notebook.  
18 I believe Judge Allen has the page there. So we're going  
19 through page 8, 9, 10 and 11, and then, of course, on the  
20 screen we're displaying it.

21 JUDGE PAYNE: The record is going -- it's going  
22 to be hard to follow the record without knowing what  
23 you're talking about. Are you on page 10 of the  
24 illustrative exhibit?

25 MR. HAMILTON: Right now, we're on page 9 of the

Rodden - Direct

1 illustrative exhibit.

2 JUDGE PAYNE: Page 9. Okay.

3 MR. HAMILTON: That's what's displaying on the  
4 screen.

5 JUDGE PAYNE: All right. And page 9 is what?

6 THE WITNESS: This is simply the Richmond area  
7 with VTD boundaries in red. The racial data that we've  
8 been discussing with black-and-white, and green is the  
9 county boundaries.

10 Q Okay. If we turn to the next page.

11 JUDGE PAYNE: That's 10 in the illustrative  
12 exhibit; is that right?

13 MR. HAMILTON: That's correct, Your Honor.

14 Q Dr. Rodden, what is this?

15 A This is the same map but with the benchmark  
16 boundaries superimposed.

17 Q And the next slide, which is page 11, of the  
18 illustrative exhibit?

19 A That is the same map but with HB 5005 boundaries  
20 superimposed.

21 Q So if we flip back and forth between these two slides  
22 on the screen, you can see how the district changed? You  
23 can do to the same thing with paper copies, but Your  
24 Honors, I believe it's a little easier to see on the  
25 screen when you see how it changes. Now, in broad terms,

Rodden - Direct

1 if a map drawer wanted to achieve a 55 percent black  
2 voting age population in House District 71, what did they  
3 have to do to achieve that?

4 A Well, it was necessary to add substantial population.  
5 There was a broad problem that the -- that the urban  
6 districts, especially 71 and 69, were underpopulated  
7 relative to the suburbs. Many of the surrounding suburban  
8 districts were overpopulated. So it was necessary to  
9 increase the population of District 71 by a substantial  
10 amount, but yet, at the same time, the goal was to get  
11 from 46 percent African-American voting age population to  
12 55 percent African-American voting age population.

13 Q So in order to do that, you had to either add  
14 African-American population or subtract white population;  
15 is that right?

16 A Well, in the report, I show that one actually has to  
17 do both. It's not possible to reach that target by only  
18 adding African-American population. So if it was possible  
19 to simply add a group of completely African-American VTDs,  
20 it still wouldn't be enough. It would still not be at the  
21 55 percent target.

22 Q Okay. And if we look at these areas, are there areas  
23 of significant concentration of white voters and areas of  
24 significant concentrations of black voters that were  
25 moved?

Rodden - Direct

1 A Yes. The -- there was a general movement of the  
2 district from west to east to remove some of the white  
3 voters in the east and a few to the south and then pick up  
4 African-American voters in the districts -- in the VTDs to  
5 the east.

6 Q Okay. Delegate McClellan testified this morning.  
7 Were you in the courtroom when she testified?

8 A I was.

9 Q And she testified about VTD 207. Can you just point  
10 that out, where that is on the map? Maybe circle it with  
11 your finger.

12 A Okay.

13 Q And what's the racial composition of that district?

14 A It's overwhelmingly white.

15 Q What its political performance?

16 A It's very democratic.

17 Q And was that -- in the benchmark, was that in House  
18 District 71 or out?

19 A That was -- in the benchmark was in HD 71.

20 Q So this is a large VTD of largely white democratic  
21 voters that was removed from Jennifer McClellan's  
22 district?

23 A Yes.

24 Q And where was it placed?

25 A In District 68.

Rodden - Direct

1 Q And who was the delegate there?

2 A Delegate Loupassi.

3 Q Is he a democrat or republican?

4 A Republican.

5 Q Okay. So white democratic voters were moved into a  
6 republican district; is that right?

7 A Yes.

8 Q Okay. What other -- was the removal of HD -- I'm  
9 sorry -- of VTD 207 significant to your analysis?

10 A Well, it was -- it was a very densely populated, very  
11 populous white VTD. And as I described, it was necessary  
12 to add white voters, and so this was a VTD that helped  
13 accomplish that.

14 Q Add or subtract white voters?

15 A I'm sorry. Add white voters to the surrounding  
16 district. You had to remove the white voters from  
17 District 71.

18 Q Did that change make this district more  
19 Richmond-centric?

20 A No, not that change. It made it a little bit less  
21 so.

22 Q Okay. How about the movement of VTD 701, 702 and  
23 part of 703? Do you see where that is? Can you maybe  
24 circle that for us?

25 A Yes. It might be helpful to have the map that was --



Rodden - Direct

1 actually, the figure in the report that has the blue lines  
2 as well to show us where the -- yes. So here, we can see  
3 more clearly which VTDs were removed. The blue line helps  
4 capture that.

5 Q Okay.

6 A So those were the VTDs that were heavily  
7 African-American VTDs that were taken from District 70 and  
8 placed in District 71, which had the effect of increasing  
9 the African-American voting age population of House  
10 District 71.

11 Q So this is a concentrated group of African-Americans  
12 that were moved into House District 71?

13 A Yes.

14 Q Okay. And then how about VTD Ratcliffe? We heard  
15 some talk about that this morning. Can you point out  
16 where that is?

17 A That is right here.

18 Q So that's the upper northeastern corner of the  
19 district?

20 A Yes.

21 Q And was the addition of Ratcliffe significant to your  
22 analysis?

23 A Yes. That's a large VTD both geographically and in  
24 terms of population, and it includes a lot of  
25 African-American voters. So that was another move that

Rodden - Direct

1 helped increase the black voting age population in the  
2 district.

3 Q Did that -- was that an addition of another part of  
4 Richmond or was it a different part of the area?

5 A That move reached across the Henrico County line and  
6 brought in Henrico County to that part of the district for  
7 the first time.

8 Q All right. And I think you've already talked about  
9 whites being removed from HD 71 with -- in VTD 207. Are  
10 there other examples of where white population was removed  
11 from House District 71?

12 A Yes. The most obvious one is up here in some  
13 districts that had been part of -- some VTDs that had been  
14 part of District 71 that are in Henrico County. So there  
15 was a removal of three of these, Summit Court, Stratford  
16 Hall and Hilliard. So as we can see here, there were some  
17 western Henrico white VTDs that were removed, and then  
18 there was kind of a slightly larger number of people added  
19 in Henrico to the east in the Ratcliff VTD.

20 Q Let me direct your attention to -- maybe I should  
21 erase these lines here first. Can you point out HD -- I'm  
22 sorry -- VTD 505?

23 A Yes. That was also discussed earlier today. That's  
24 the one down here.

25 Q Okay. Did you examine that in your report?

Rodden - Direct

1 A Yes.

2 Q Now, I'll tell you that the Court, this Court, in its  
3 memorandum opinion on page 134, indicated that the  
4 decision to split this VTD advanced other neutral  
5 principles such as compactness. If the goal was to  
6 advance the compactness of District 71, would this VTD be  
7 split the way it was split?

8 A Well, it -- this is where I think the dot density map  
9 is useful, because we can see that this VTD only has some  
10 population over in the Oregon Hills neighborhood, which is  
11 over here. So it would have been possible to slice off  
12 the noncompact segment without losing any voters.

13 Q And what's in the western side of this -- of this  
14 VTD?

15 A Cemetery and some park land.

16 Q So fair to say, no voting age population resides in  
17 5005 -- in that part of 5005?

18 A In 505, correct.

19 Q 505, right. So if you wanted to advance compactness,  
20 how would you have split the district?

21 A Well, it seems if that was the only goal and one  
22 wanted to keep the population together, it would have been  
23 possible just to have included the Oregon Hills  
24 neighborhood in the -- in the -- in District 71.

25 Q All right. Let's turn to Exhibit 69, Your Honors.

Rodden - Direct

1 This is illustrative exhibit page 12. So this is the same  
2 thing. Am I correct? This is Figure 6 from your report?  
3 This is a composite map showing both the benchmark as well  
4 as the adopted plan; is that right?

5 A Yes.

6 Q And this is Delegate Carr's district?

7 A Yes.

8 Q So if we click to the next slide, that's page 14 of  
9 the illustrative exhibit, this is the same thing stripped  
10 down, just the area with the VTDs; is that right?

11 A Yes.

12 Q And the next page, page 15. This is the -- of the  
13 illustrative exhibit. This is the same thing now with the  
14 racial density dot map added?

15 A Yes.

16 Q Okay. And if we go to exhibit -- illustrative  
17 Exhibit page 16, what is that?

18 A That is the same information but with the benchmark  
19 boundary.

20 Q Okay. And then if we go to the next page, that's  
21 page 17, this is the HB 5005 as adopted map?

22 A Yes.

23 Q And if we click back and forth between these two, we  
24 can see how this map changed?

25 A Yes.

Rodden - Direct

1 Q Okay. So can you describe -- can you describe the  
2 composition -- the population and racial composition of  
3 this district at the time of the redistricting?

4 A Yes. So this one was far short of the population  
5 goal. It had a population of 71,300. So it needed to add  
6 almost 9000 individuals. And the African-American voting  
7 age population was 56 percent. So it was just above  
8 the -- above the threshold. And so if it was -- if the  
9 desire was to achieve equal population while maintaining  
10 the threshold, then it was necessary to make sure that the  
11 population that was moved in was roughly half  
12 African-American.

13 Q So how was -- and maybe we can go back to  
14 illustrative Exhibit 12. There we go. I'm sorry.  
15 Illustrative Exhibit 13, which is Figure 6 from your  
16 expert report, which shows both the benchmark and the  
17 adopted plan. How was adding population achieved in House  
18 District 69?

19 A Well, the district expanded in a few different ways.  
20 So it took in -- if we kind of go clockwise and starting  
21 at the top, it took in the VTDs 402 and 508 and 609 in the  
22 northeast and then -- and those came from District 70.

23 And then it also took, from District 70, the VTDs 911 --

24 Q So why don't we start with this first area and I'll  
25 just circle it on the screen here. This took -- I think

Rodden - Direct

1 you said 402, 508, 609. And then did it also take part  
2 of -- the other part of 505 that we just talking about?

3 A Yes, that's right. So it reached across the river  
4 and included that.

5 Q And what was the racial composition of this? I think  
6 we can see from the map, but maybe you could describe it  
7 for the record?

8 A Yes. That's a white neighborhood on the south side  
9 of the river.

10 Q Now, all else being held constant, if the map drawers  
11 had just added these northern white VTDs; that is, 402,  
12 508, part of 505 and 609, what effect would that have had  
13 standing alone on the black voting age population of House  
14 District 69?

15 A Well, that would have pushed the African-American  
16 voting age population below the 55 percent target.

17 Q So let's take a look at what other changes were made  
18 to this district. So we'll go on moving around clockwise.  
19 I see that VTD 903 and 811 were added. Could you describe  
20 those?

21 A Yeah. Those are dense, or relatively dense, and  
22 overwhelmingly African-American VTDs that had been in  
23 District 70, and those were moved into District 69.

24 Q And do you recall what the black voting age  
25 population was in those two VTDs?

Rodden - Direct

1 A 903 was 64 percent, and 811 was 76 percent.

2 Q Okay. So both a fairly high black voting age  
3 population moved in?

4 A Yes.

5 Q Was that significant to your analysis?

6 A Yes. That helped increase the African-American  
7 voting age population of the district.

8 Q And where did they come from?

9 A Those came from District 70 to the south, which --

10 Q And what was the -- what was the -- at the time of  
11 the redistricting -- we'll look at District 70 separately.  
12 But at the time of the redistricting, what was the racial  
13 composition of District 70?

14 A District 70 had one of the largest African-American  
15 voting age population shares in the region. It was at  
16 62 percent, and it was already at equal population. It  
17 was within the threshold.

18 Q Okay. So this black population moved from 70 to 69,  
19 bringing down the black voting age population of 70 and  
20 increasing the black voting age population of 69; is that  
21 right?

22 A Yes.

23 Q Okay. Then continuing moving west, what happened  
24 with Belmont, Manchester and Beaufont?

25 A Belmont was moved into District 70, and that is --

Rodden - Direct

1 that is about a 50/50 racial breakdown in that VTD. But  
2 the -- the other two VTDs on the west were moved to  
3 District 27, which had been -- previously was -- at the  
4 time of the benchmark, was quite overpopulated.

5 Q So is that significant? Why was it being moved?

6 A Well, there was -- there's a general -- as I  
7 described, in general, the City of Richmond is -- is  
8 losing population relative to the suburbs, and the  
9 suburban districts are overpopulated. So one might expect  
10 to see, in that situation, that some of those -- some of  
11 those suburban VTDs would make their way into 69 since it  
12 was underpopulated. And there were already some -- some  
13 Chesterfield VTDs in District 69. But in spite of that,  
14 it lost some of these suburban VTDs.

15 Q So you would have expected to see the opposite.  
16 Since House District 27 was overpopulated, you would have  
17 expected to see it shedding population toward District 69  
18 and instead, the opposite happened; is that right?

19 A Yeah. In my experience, typically that's what  
20 happens with these kind of spillover effects of population  
21 loss in city centers. But in this case, the population  
22 really was brought in from elsewhere, from District 70.

23 Q Let's focus on the VTD 410. Can you point out where  
24 that is? Was that VTD split?

25 A Yes, it was.



Rodden - Direct

1 Q And how was it split?

2 A Well, the VTD is kind of a long VTD that goes all the  
3 way up to the river, and it has -- it has a larger  
4 African-American population on the south side and then up  
5 on the other side of the -- I guess on the other side of  
6 the line, it's -- the population is relatively -- the  
7 white population is larger. And so you can see the split  
8 there kind of happens at the narrowest part of that VTD.

9 And that also -- that also, it should be pointed out,  
10 preserves a corridor for 68. So 68 is kind of a  
11 district -- this is Delegate Loupassi's district, which  
12 goes from the -- kind of the west side neighborhoods of  
13 Richmond and out into the suburbs. And so by splitting  
14 that VTD, it also opened up that corridor to the suburban  
15 parts of District 68.

16 Q The VTD was split. The portion of the VTD that was  
17 included in House District 69, how would you describe that  
18 portion?

19 A That was the more African-American part of the VTD.

20 Q And the portion of this VTD that was included in  
21 House District 68, how would you describe that portion?

22 A It was relatively -- relatively white, relative to  
23 the part that was kept in 69.

24 Q So was a division of this VTD along racial lines?

25 A Yes.

Rodden - Direct

1 Q And what was the ending black voting age population  
2 of House District 69?

3 A It ended up at 55.2 percent.

4 Q Okay. Let's move to House District 70. This is  
5 Delegate McQuinn's district; is that right?

6 A Yes.

7 Q This is just a bit to the east of where we were just  
8 looking; is that right?

9 A Yes.

10 Q So let's click through a few maps here. If we turn  
11 to the next page, which is the 20th page of the  
12 illustrative exhibits, this is VTDs without the district  
13 lines, right?

14 A Yes.

15 Q And page 21 of the illustrative exhibit is the same  
16 thing but with the racial data distributed over the top of  
17 the map?

18 A Yes.

19 Q And the next page is the benchmark, is that right, in  
20 House District 70?

21 A Yes.

22 Q And then the next page is the House District 70 as  
23 drawn in the final map; is that right?

24 A Yes.

25 Q So if we click back again between these two, we can

Rodden - Direct

1 see how this district changed between the original  
2 benchmark and the adoption of the final plan; is that  
3 right?

4 A Yes. Above all, we see kind of a westward movement  
5 out in the southwest part of the district into the  
6 suburbs.

7 Q Okay. Can you describe the population and racial  
8 composition of this district at the time of the  
9 redistricting?

10 A Yes. This one, as I believe I described earlier, was  
11 already at the population threshold. It was about 79,400.  
12 And the racial composition was such that it had almost  
13 62 percent black voting age population. So it was one of  
14 the largest in the Richmond area.

15 Q And I think we already talked briefly, when we were  
16 discussing House District 71, the neighbor to the west of  
17 the top part of this district, VTD 701, 702 and 703. Can  
18 you point those out here on this map?

19 A Yes. Now, we're seeing them from a different  
20 perspective, but they are right there.

21 Q And is that the most densely populated area of  
22 African-Americans that were in House District 70 to start  
23 with?

24 A I believe so.

25 Q Okay. And do you know what that's comprised of? Do

Rodden - Direct

1 you know who lives there?

2 A I -- I believe there's some public housing buildings  
3 in that -- in those VTDs.

4 Q Okay. And you testified already, these VTDs were  
5 moved from House District 70 into House District 71?

6 A Yes.

7 Q And the effect of -- can you describe the effect of  
8 moving these two and a half VTDs from District 70 to  
9 District 71, the effect on the racial composition of the  
10 two districts?

11 A Yes. This is where it's important to understand the  
12 way these districts kind of interlock and try to  
13 understand the regional dynamics. So if the goal is to  
14 reach 55 percent in all of the districts, one has to be  
15 very careful because District 71 needed a lot of  
16 African-American voting age population and it was  
17 difficult to achieve without moving some of these very  
18 dense, very populous African-American VTDs.

19 And as we see here, District 70 had a -- started out  
20 with a rather high African-American voting age population.  
21 So it had -- it had the population that District 71  
22 needed. And so this move was -- appears to have been very  
23 crucial in meeting the target in 71.

24 Q How would you describe -- is it fair to describe that  
25 area of 701, 702 and part of 703 as a stark difference

Rodden - Direct

1 between the racial composition of that VTD and the  
2 surrounding VTDs around it?

3 A Which one? 701 and 702?

4 Q 701 and 702. Right in the center of your circle  
5 there.

6 A Well, they are in the midst of a dense  
7 African-American part of Richmond, and it moved a  
8 neighborhood -- you know, a heavily African-American  
9 neighborhood from one district to another.

10 Q All right. What other VTDs were moved out of  
11 District 70?

12 A There were a couple of -- a couple of rather sparse  
13 and relatively small VTDs on the -- on the eastern side of  
14 the district. But there -- as we discussed earlier, there  
15 were some VTDs along the river that were -- that were  
16 moved from District 70 into sixty-nine. And then as we --  
17 as we move to the west, we also discussed districts that  
18 had been -- that had been moved from 70 into 69.

19 Q So let me direct your attention to VTDs 903 and 611.  
20 Can you see those on the map?

21 A I believe it might be 811, if I -- if the -- the  
22 numbers are very small.

23 Q And can you describe the racial composition of those  
24 two VTDs?

25 A Those are majority African-American, large majority

Rodden - Direct

1 African-American VTDs.

2 Q And I think it's 903 and 611; is that right? I'm --

3 A The marker is right in front of it right now so it's  
4 hard to see. Yes, I think that's right.

5 JUDGE PAYNE: I don't see 611. Where is it?

6 MR. HAMILTON: 611 in the blowup is right here  
7 in the map. I've just circled it on the screen, Your  
8 Honor. It's directly above 606. Do you have it, Your  
9 Honor?

10 JUDGE PAYNE: Yeah.

11 MR. HAMILTON: Okay. Thank you.

12 JUDGE PAYNE: Thank you.

13 Q So, again, can you describe the effect on the racial  
14 composition of District 70 of moving these two VTDs?

15 A This is part of a larger -- a larger set of moves in  
16 this area in which District 69, in order for it to gain  
17 population, without gaining too much white population, it  
18 was necessary to move some African-American population  
19 from surrounding districts, and District 71 certainly  
20 wasn't an option, given how difficult it was to achieve  
21 the target there. So 70 was -- was the option. And so  
22 African-Americans were moved from 70 into 69. And that  
23 had the effect of preserving that 55 percent threshold.

24 Q In which district?

25 A In 69. Of course, 70 had -- had -- started out with

Rodden - Direct

1 62 percent African-American voting age population. So  
2 it -- if there was to be a plan that created 55 percent  
3 districts in all six, it was necessary for some of those  
4 to be removed from 70. It couldn't have worked otherwise.

5 Q Okay. So this is an instance of District 70 donating  
6 two heavily African-American VTDs to its neighbor, House  
7 District 69; is that right?

8 A Yes.

9 Q Okay. And what effect did that movement have on the  
10 population, the total population of House District 70?

11 A Right. So as we've been discussing, 70, in all these  
12 moves we've seen so far, has been losing population. It  
13 started out at the population threshold, but then it shed  
14 population up there in the northern turret. It shed  
15 population over along the river and it shed population in  
16 903 and 611. So at that point it then had to pick up some  
17 population.

18 Q And where was that population added from?

19 A So there were a group of VTDs in the southwest of  
20 District 70 that were really the only VTDs in the entire  
21 Richmond area that had not previously been -- that were  
22 African-American majority VTDs that had not previously  
23 been included in one of the -- in one of the districts in  
24 the benchmark plan. So the district --

25 Q Which were those, sir?

Rodden - Direct

1 A Those were Southside, Meadowbrook, Falling Creek and  
2 Chippenham.

3 Q So this is all in the southwest corner of the map  
4 that we're looking here, which is Figure 7, page 28 of  
5 your report?

6 A Circle those as well.

7 Q All right. This was newly added territory to the  
8 district; is that right?

9 A Yes.

10 Q And what county was that in?

11 A I believe that was Chesterfield.

12 Q Had Delegate McQuinn previously represented that  
13 area?

14 A No.

15 Q And you were here in the courtroom this morning and  
16 heard Delegate McQuinn express her concern about this  
17 change adding this part of Chesterfield to her district.  
18 Did you hear that?

19 A Yes. It seems like a rather different type of area  
20 from the rest of the district.

21 Q All right. How did this track the suburban  
22 population growth in this area?

23 A Well, one of the features that was interesting to me  
24 in understanding this area was that as in many other  
25 American cities, there's an ongoing process of



Rodden - Direct

1 African-American suburbanization. And so we see the  
2 African-American population moving from city centers out  
3 into suburban areas. And what we see here is that the  
4 boundaries of the -- of the majority/minority district  
5 simply follow the population flow and reach further out  
6 and bring in these majority African-American VTDs into  
7 District 70.

8 Q Does the district --

9 JUDGE PAYNE: Excuse me. What are you saying --  
10 you said that the one with Chippenham, Falling Creek,  
11 Meadowbrook and Southside was different. What do you mean  
12 by different --

13 THE WITNESS: Well, this is --

14 JUDGE PAYNE: -- other than the racial  
15 composition? How else was it different?

16 THE WITNESS: These are suburban places that are  
17 in a different county. So this is an interesting district  
18 where it has -- part of the district is up in the kind of  
19 south side area of Richmond and then it goes through a  
20 very suburban and ex-urban part of Henrico, and then it  
21 comes back into another part of -- another part of --

22 JUDGE PAYNE: I'm sorry. I thought you were  
23 talking about it was different than what McClellan had  
24 previously represented.

25 MR. HAMILTON: Not McClellan, Your Honor.

Rodden - Direct

1 McQuinn.

2 JUDGE PAYNE: Yeah. Thank you.

3 THE WITNESS: So it had these two parts of  
4 Richmond and it had a part of Henrico, and now it's adding  
5 a suburban part of Chesterfield. So it's got kind of two  
6 different suburban populations.

7 JUDGE PAYNE: But you said it was different.  
8 How is it different? I don't understand that. If you  
9 know this area, if you look at the area you're talking  
10 about and you look at the Henrico area, how are they  
11 different other than by your dots?

12 MR. HAMILTON: Well, and other than by being in  
13 two different counties?

14 JUDGE PAYNE: No. Other than by your dots, how  
15 are they different?

16 THE WITNESS: I was merely pointing out that  
17 these are more sparsely populated, single-family home  
18 suburban areas that were being added to a district that  
19 had more of a concentration in multiple family housing in  
20 urban areas before.

21 Q Maybe I can ask a couple of clarifying questions.  
22 Number one, prior to this move, had Delegate McQuinn had  
23 any part of her district in Chesterfield County?

24 A No. I don't believe so.

25 Q Okay. And we talked about how in 701, 702 and part

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1 of 703 there were some public housing projects with  
2 densely populated African-American populations. Do you  
3 recall that?

4 A Yes.

5 Q Okay. Are there any densely populated  
6 African-American populations and public housing projects  
7 in Chesterfield County in this area that we're talking  
8 about?

9 A No.

10 JUDGE PAYNE: In what area?

11 MR. HAMILTON: In Chippenham, Falling Creek,  
12 Southside and Meadowbrook, Your Honor.

13 JUDGE PAYNE: And your testimony is there are no  
14 African-American housing areas, public or otherwise, in  
15 that area? Is that what you're saying?

16 THE WITNESS: I wouldn't be able to testify  
17 there are none.

18 JUDGE PAYNE: I wouldn't think you could.

19 THE WITNESS: I don't have that knowledge.

20 Q Is the population density the same in the two areas?

21 A No. These are sparser than the urban districts,  
22 which I think is clear.

23 Q Okay. Which is more densely populated with  
24 African-American population?

25 A The northern turren of all of these neighborhoods.

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1 That's the area that has the densest population.

2 Q And that's where 701, 702 and 703 is?

3 A Yes.

4 Q And those are the portions that were given -- or  
5 carved out of this district; is that right?

6 A Yes. That's the only observation I was trying to  
7 make there.

8 Q All right. Thank you. Does the way the district was  
9 changed, did that adhere to traditional redistricting  
10 principles, as you understand them?

11 A Well, insofar as it crossed another county boundary,  
12 and really, it's a district that combines, as I was  
13 describing, some rather disparate neighborhoods. So I  
14 would say no.

15 Q All right. Let's turn to Exhibit -- I'm sorry. To  
16 District 74, a little further east. This is Delegate  
17 Morrissey's district; is that right?

18 A Yes.

19 Q And we'll go through the same set of maps quickly.  
20 Page 26 on the illustrative exhibit is the area of where  
21 House District 74 is located; is that right?

22 A Yes.

23 Q And then the next page, page 27, is adding the  
24 population and race data?

25 A Yes.

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1 Q And the next page, page 28, shows the benchmark plan?

2 A Yes.

3 Q And the next page, page 29, this is the adopted plan;  
4 is that right?

5 A Yes.

6 Q So if we go back and forth between those two last  
7 slides, we can see the changes in this district?

8 A Yes. The main things we see are the extraction of  
9 the African-American neighborhood in Hopewell to the  
10 southwest, and we see the -- what I think is referred to  
11 as the thickening of the neck of this district there in  
12 the middle.

13 Q Okay. Let me start with, can you describe the  
14 population and racial composition of the district at the  
15 time of the redistricting?

16 A Yes.

17 JUDGE PAYNE: Excuse me just a minute. I want  
18 to make sure I've got the right place. Seventy-four is  
19 the benchmark, all in the blue; is that right, Doctor?

20 THE WITNESS: The blue is the benchmark, yes.

21 JUDGE PAYNE: And then 74 with all the black  
22 around and down is the enacted one, right?

23 THE WITNESS: Yes, Your Honor.

24 JUDGE PAYNE: And you're saying those two differ  
25 how again? That's what I'm trying to follow.

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1 THE WITNESS: Yes. So that's -- they are -- the  
2 differences are -- require a little bit of squinting, but  
3 the southwestern part of the city of Hopewell is divided  
4 right in half, right between the white population and the  
5 African-American population. So the African-American part  
6 of Hopewell was in District 74, and it was -- it was -- we  
7 see that it was removed and placed in District 63. So  
8 that's something that doesn't jump out at us when we first  
9 look at the map, but --

10 Q So if we go to page 25 of the illustrative exhibit,  
11 which is your Figure 8 on page 31 of your expert report,  
12 we can just circle that area there, and you can see that's  
13 a Hopewell river crossing that was removed in the change  
14 in House District 74; is that right?

15 A Yes.

16 Q And there were also some changes up along the --  
17 what's referred to as the neck of the district?

18 A Right.

19 JUDGE PAYNE: That's where you said it was  
20 thickening?

21 THE WITNESS: Yes. In the center part, we see  
22 how it gets a little thicker.

23 JUDGE PAYNE: Yeah.

24 THE WITNESS: And then we also see over here,  
25 that some of the -- there are some VTDs and actually split

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1 VTDs that are changed in the district boundaries over  
2 there as well.

3 Q All right. When we start with -- when the map drawer  
4 sat down to do House District 74, what was the population  
5 and racial composition of this district at that time?

6 A So this is -- it has a lot in common with District --  
7 District 70 in the sense that it -- it started out with a  
8 population -- a total population that was within the  
9 threshold. So it was 80,153. And it also started out  
10 with a very high African-American population. Almost  
11 63 percent of the voting age population was  
12 African-American. And that is, I think, the highest in  
13 the Richmond/tri-cities area.

14 Q Okay. And in your report, you indicate that this  
15 district played the role of a donor district; is that  
16 right?

17 A Yes. I classified both 70 and 74 in that way. And  
18 then, again, this is really just the math of how we can  
19 achieve six 55 percent African-American districts in the  
20 region. Some -- some African-Americans have to move out  
21 of the overpopulated districts, 74 and 70. And so that  
22 is -- that is something that is happening here with 74.  
23 It starts out with a very large African-American  
24 population, and it gets down from 63 to around 57 percent.  
25 And that's because African-Americans are being moved from

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1 74 into 71, for the most part, and also into -- into 63.

2 Q Okay. So let's talk specifically about that. You  
3 said in the benchmark, House District 74 had a part of the  
4 city of Hopewell; is that right?

5 A Yes.

6 Q And which part did it have?

7 A There's kind of a north/south or -- it's really more  
8 east/west, I guess, divide in the city between whites and  
9 African-Americans. And we can see that --

10 Q Let me just stop you and just ask the question again.  
11 In which part of House District 74 -- which part of  
12 Hopewell did House District 74 have in the benchmark? Did  
13 it have the black part?

14 A Yes. It had the eastern African-American part.

15 Q And is that the part it gave up?

16 A Yes.

17 Q And where did that go?

18 A That went to District 63. I believe that process was  
19 described this morning.

20 Q Okay. And did House District 63 get all of -- of the  
21 city of Hopewell?

22 A No.

23 Q So it was -- it continued to be split?

24 A Yes. I believe the nature of the split was even a  
25 bit more precise this time. But there was a -- there was



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1 a split again in 63 down the middle of Hopewell.

2 Q And when you say "even more precise," even more  
3 precisely in what way?

4 A Along racial lines.

5 Q Okay. And where did those two halves of the city go?

6 A The African-American part went into District 63, and  
7 the white part went into District 62.

8 Q And 63 is one of the challenged districts?

9 A Yes.

10 Q And is -- what is 62?

11 A Sixty-two is a suburban district that I believe is  
12 represented by a republican delegate.

13 Q Okay. And isn't this just fixing a water crossing by  
14 eliminating a part where House District 74 jumped the  
15 river to pick up part of the city of Hopewell?

16 A Well, it does achieve that. But there's also a  
17 crossing just to the north of the Appomattox that is not  
18 changed, and there are many other -- of course each, of  
19 these districts we're looking at has crossings of the  
20 James.

21 Q Let's take a little bit of a closer look at the  
22 northern part of this district. This is page 30 in the  
23 illustrative exhibit. It's Figure 9, page 33 of his  
24 underlying report. Can you describe what we're looking at  
25 here?

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1 A Yeah. We were talking about the neck of the  
2 district. This is a district that I can't help but think  
3 looks like a meat cleaver, and this is somewhere on the  
4 handle of that thing toward the end. This is the northern  
5 tip of the district. And we see in black the new district  
6 boundary, the enacted district boundary, and in blue we  
7 see the benchmark district boundary.

8 Q Let me direct your attention to VTD Randolph. Can  
9 you point out where that is?

10 A I believe it's that one. Yes.

11 Q What happened with this VTD?

12 A Well, this is just a -- this is a VTD, I think, that  
13 helps demonstrate what I believe is quite stark in looking  
14 at this map; that the district boundary kind of follows  
15 along the residential -- the line of residential  
16 separation between African-Americans and whites. So this  
17 is an instance where the district kind of jogs out and  
18 adds a VTD that is African-American and pushes up the  
19 African-American voting age population of District 74.  
20 And it kind of jogs back in and misses a white VTD.

21 JUDGE PAYNE: Where is this Randolph that is  
22 shown on Figure 30 of the illustrative exhibit on page 28  
23 and page 29 of your -- of those exhibits?

24 MR. HAMILTON: It's at the far north -- if I can  
25 answer that question for, Your Honor, unless you'd like

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1 the witness to.

2 JUDGE PAYNE: Yeah, let him.

3 MR. HAMILTON: Okay.

4 THE WITNESS: In which figure are we looking at?

5 JUDGE PAYNE: There's a blow -- or Exhibit 30 --  
6 or page 30 of the illustratives is a blowup of the western  
7 most part of the district, and the benchmark is 74 and  
8 that's on -- 74 is on page 28, and the benchmark -- I mean  
9 the House Bill 5005 is on page 29. And I'm trying to  
10 figure out where on pages 28 and 29 this Randolph area is  
11 that you're talking about. Can you flip to those slides  
12 so I can see where he circles it?

13 MR. HAMILTON: The circles are gone, Your Honor,  
14 but we can go back.

15 Ms. Marino, if you could go back a couple of slides  
16 here.

17 THE WITNESS: It might be possible to answer  
18 your question without --

19 MR. HAMILTON: Right there.

20 THE WITNESS: Oh, okay.

21 JUDGE PAYNE: Well, where is it?

22 MR. HAMILTON: I think what Your Honor may be  
23 asking is was this changed in the HB 5005?

24 JUDGE PAYNE: That's what I'm getting to.

25 MR. HAMILTON: It wasn't changed. That was my

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1 next question.

2 JUDGE PAYNE: Well, what difference does it make  
3 if it wasn't changed was my question so I understand why  
4 we're talking about it?

5 Q So was there a choice that the map drawers made about  
6 to leave certain lines and add -- and change other lines?

7 A Certainly. The approach I took in my report was to  
8 examine the districting decisions, whether those involved  
9 keeping lines or moving them. So when I found evidence of  
10 a stark racial split, I included that discussion in my  
11 report. And it -- some of those involved changes and some  
12 of those involved decisions not to make changes.

13 Q Okay. And this was one -- in the latter category,  
14 this is a stark racial line that existed in the benchmark  
15 map and was maintained in the adopted map; is that right?

16 A Yes. And it's an important part of the analysis  
17 because it's not -- in much of the region under analysis  
18 here, it would not be possible to make moves that would  
19 make the racial splits more stark. They were already as  
20 stark as really could be imagined. In some places, it  
21 experienced a lot of suburbanization. There were moves  
22 that were made and the lines then moved to follow, but  
23 this was not one of those situations.

24 Q Let's return to the closeup of that area we were just  
25 looking at. It's page 30 of the illustrative exhibit.

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1 It's look at the choices -- the lines that were changed in  
2 this area. May we first -- there are two split VTDs here.  
3 Can you identify them?

4 A The one to the north is called Brookland, and there  
5 is one called Belmont.

6 Q Okay. Why don't we look at Brookland first. How was  
7 that VTD split?

8 A It's a strangely shaped VTD. I'm afraid this one  
9 might be a bit difficult to see, but it involves -- it  
10 involves -- so we can see it kind of moves around -- now  
11 the circle needs to be removed.

12 Q So the question is how was it split?

13 A It was split such that the western side that was  
14 white was kept out of the district and the inside part,  
15 the eastern part that was more African-American, was kept  
16 in the district.

17 Q So I'm just going to put an arrow on the screen, and  
18 you tell me if I've got this wrong. The arrow on the  
19 right is pointing to the word Brookland, and there's a  
20 blue line that's right above it; is that right?

21 A Yes.

22 Q And then the other line on the left that I've drawn  
23 is the other side of the Brookland VTD; is that right?

24 A Yes.

25 Q Which side has the more concentrated African-American

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1 population?

2 A The east side.

3 Q And where was that assigned?

4 A Into District 74.

5 Q And which side had the predominately white  
6 population?

7 A The west side.

8 Q And where was that assigned?

9 A Into District 73, I believe it is. No. It might not  
10 be.

11 Q The neighboring district?

12 A Yes.

13 Q The neighboring district; is that right?

14 A Yes.

15 Q Okay. And then what other VTD was split here?

16 A To the south, there is a district called Belmont.

17 Q Okay. And how was that split?

18 A In a similar fashion. We see that there's a dense --  
19 I'm sorry. We should --

20 Q Is that Belmont that I've just circled on the screen?

21 A Yes. So we see that the line was -- the split of the  
22 VTD happened using census blocks that placed an  
23 African-American population right next to the boundary on  
24 the east inside District 74 and white population outside  
25 of the district.

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1 Q Couldn't this have simply been done -- as a matter of  
2 politics, I mean, couldn't they have just split this in  
3 order to help the republicans on the white side of the  
4 line?

5 A Well, there's no -- there's no information available  
6 about voting behavior below the level of the VTD. Because  
7 we have a secret ballot, that is the lowest level at  
8 which -- which election information is available. It  
9 might be possible to -- to simply apply uniformly the  
10 electoral behavior of the entire VTD to each census block  
11 so that when one adds up political totals for a  
12 hypothetical district, they get a number. But it's not  
13 possible to carve through a VTD and divide it up in that  
14 way and hope to achieve something politically.

15 Q Let me stop you, and I'm going to back you up there  
16 because I think this is an important point. Mr. Braden  
17 mentioned this this morning. Election results are  
18 reported at what level?

19 A At the precinct level.

20 Q At the VTD level?

21 A In our case, in Virginia, the same things as a VTD.

22 Q So let's just pause here and look at this particular  
23 one. Belmont, I think, is what we were talking about the  
24 Belmont VTD, we'll know how many votes were cast for  
25 democrat and how many votes were cast for republican and

Rodden - Direct

1 how many votes were cast for independent candidates,  
2 correct?

3 A Yes. We can get that information at the precinct  
4 level for many different elections; gubernatorial,  
5 presidential and so forth.

6 Q Okay. So the data is available at the precinct  
7 level. So you can certainly make political divisions in  
8 assigning whole precincts from one district to another; is  
9 that right?

10 A Yes.

11 Q And at the census block level, I think you said  
12 election results are not available at the census block  
13 level; is that right?

14 A Correct.

15 Q And I think you said this, but let me make sure it's  
16 clear. You could take -- let's imagine a district that  
17 votes 60 percent republican and 40 percent democratic.  
18 You would know that this VTD votes 60/40  
19 republican/democrat; is that right?

20 A Yes.

21 Q Now, if you wanted to go into each VTD, you could  
22 attribute that split, 60/40 split, to each single block,  
23 right?

24 A Yeah. So one could go into Maptitude and give it a  
25 60/40 number --



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1 Q Would that treat any census block within that VTD  
2 differently than any other census block within that VTD?

3 A No.

4 Q They'd all be the same?

5 A Yes. It would have to be. We simply don't have the  
6 information.

7 Q So if we went to the far north and grabbed the  
8 VTD up -- I'm sorry -- a census block up there, it would  
9 look exactly the same, politically speaking, as a census  
10 block in the far south?

11 A Correct.

12 Q And a census block in the east would look exactly the  
13 same, politically speaking, as a census block in the west?

14 A Yes. For someone who --

15 Q They're going to be exactly the same?

16 A For someone who does geo-spatial analysis, this is  
17 annoying. We would like to have more fine grain data, but  
18 we don't.

19 Q So at the risk of asking an overly obvious question,  
20 the data isn't available if you're going to split a VTD to  
21 decide which census blocks are better or worse for you as  
22 a political matter? It's just not available at that  
23 level; is that right?

24 A No. It's --

25 Q That's not right?

Rodden - Direct

1 A No. The data are not available. So it's correct,  
2 yes.

3 Q Thank you, sir.

4 JUDGE PAYNE: Excuse me. But if you take a VTD  
5 and you figure it's 60/40, to use Mr. Hamilton's example,  
6 and you attribute everything as 60/40, why isn't it all  
7 60/40 in the north and 60/40 in the south and 60/40 in the  
8 east and 60/40 in the west, if you're going to do it by  
9 attribution? Why doesn't that happen?

10 THE WITNESS: I think that that is what happens.  
11 So I think that when we take the Maptitude software and we  
12 want to start subdividing VTDs, we can go ahead and take  
13 the information from the VTD and attribute it in just that  
14 way to every block. So we can treat every block in that  
15 VTD as 60/40. But what that doesn't allow me to do is go  
16 through and pick democratic blocks and put them on one  
17 side and republican blocks on the other side because  
18 they're all 60/40.

19 JUDGE PAYNE: Well, if it's 60/40 republican and  
20 60/50 democrat, don't you know then -- when you're doing  
21 it 60/40, aren't you attributing 60 republican, 40  
22 democrat?

23 THE WITNESS: Yes. So when I add up the numbers  
24 for a district that I'm creating, then I can get a total  
25 that will tell me the partisan composition of that

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1 district. But what I can't understand is how we would go  
2 about choosing along these lines in order to achieve a  
3 political goal when we're just treating them all as the  
4 same.

5 Q In other words, you can't -- because every VTD is --  
6 every census block is treated as the same in that kind of  
7 analysis, you can't figure out where the democrats are and  
8 the republicans are because they don't all live right next  
9 to each other in an even distribution?

10 A They're all interchangeable. If I wanted to get 60  
11 democrats, any of the blocks would give me 60 democrats.  
12 I can weigh it by population, so some of them might have  
13 more people. But they're all going to be kind of  
14 politically, in my view, the same as I'm picking out those  
15 blocks.

16 Q Maybe to clarify this, I'll ask another couple of  
17 questions. Let's imagine a VTD that are at 60/40 present  
18 democrats and all the republicans live in the northern  
19 part of the district and all of the democrats live in the  
20 southern part of the district. You're not -- I guess  
21 that's -- you actually -- you would have to have that --  
22 you don't have that data to do. Let's imagine that  
23 they're evenly distributed across the VTD, 60 percent  
24 democrat, 40 percent -- 60 percent republican, 40 percent  
25 democrat. If you wanted to get the democrats out, you

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1 don't know where they live, right?

2 A Precisely.

3 Q Because the census block data treats it all the same?

4 A Right.

5 JUDGE PAYNE: You mean you don't know where they  
6 live based on this mapping?

7 THE WITNESS: Right. I -- we have a secret  
8 ballot so we just don't -- the VTD is just the lowest  
9 level at which we know anything about the individual's  
10 partisanship.

11 Q All right. Thank you. Let's move to exhibit --  
12 House District 63. This is a final Richmond area  
13 district. This was Delegate Dance's district; is that  
14 right?

15 A Yes.

16 Q And were you here for Delegate Dance's testimony this  
17 morning?

18 A Yes.

19 Q So let's -- let's start by looking at a few of these.  
20 We're on page 32 of the illustrative exhibit. This is --  
21 this is Figure 10 from page 34 of your report; is that  
22 right?

23 A Yes.

24 Q And if we click to the next slide, this is the same  
25 set of slides. So here's the area without any race data.

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1 If we put the next one in, we can see the racial  
2 distribution. Page 35 shows the benchmark; is that right?

3 A Yes.

4 Q And then page 36 is the adopted map?

5 A Yes.

6 Q So if we click back and forth between these two, we  
7 can see some of the changes here. This is the -- I think  
8 the Court called it a validly racial split of Dinwiddie  
9 County; is that right?

10 A Correct. Yeah, to the south, we see that split come  
11 in and the hook that reaches up to bring up the  
12 African-American voting population of 75. And the other  
13 big noticeable change is the extension of the district to  
14 the east in a way that -- that picks up African-American  
15 neighborhoods in a rather -- in a rather precise way.

16 Q All right. So what was the population and racial  
17 composition of this district at the time of the  
18 redistricting?

19 A This was another one that needed to gain population.  
20 It had close to 74,000. So it needed to add 6000  
21 population. The benchmark African-American voting age  
22 population was 58 percent. So it was -- it was a bit --  
23 it was a bit above the -- above the threshold already.

24 Q All right. And I believe you've heard testimony that  
25 HB 5005 split Dinwiddie County in half; is that right?

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1 A Yes.

2 Q And was that significant to your analysis?

3 A Yes, because this created a kind of ripple effect  
4 where District 63 was already short on population, and in  
5 order to -- in order to achieve the 55 percent target in  
6 District 75, it was necessary to reach up into Dinwiddie  
7 County and take a substantial number of African-Americans  
8 and to even -- it wasn't quite enough to use only the  
9 sparse areas. So there was a move up into a somewhat  
10 denser area to bring up the voting age population, the  
11 African-American voting population of District 75 to  
12 55 percent. So then that left District 63 in a situation  
13 where it needed to gain substantial population.

14 Remember, it was already short by 6000. So now it  
15 needs to gain population, but it has a problem that's kind  
16 of familiar, which is that it's surrounded by some white  
17 areas. But there was -- there was a fairly obvious  
18 solution, which was to move the district to the east and  
19 to snake over and extract part of Hopewell and take that  
20 away from District 74, which had a very large  
21 African-American voting age population in the benchmark.

22 Q So let me stop you there. The district just to the  
23 south of the line, the District 63 border is House  
24 District 75?

25 A Yes.

Rodden - Direct

1 Q And that was underpopulated; is that right --

2 A Yes.

3 Q -- at the time.

4 A These places were often underpopulated.

5 Q And what was the racial composition of House District  
6 75 at the time of the redistricting?

7 A It was almost exactly at 55 percent. But it needed  
8 to gain 10,000 people, and it was -- that was a challenge  
9 because it was surrounded by a lot of sparse population,  
10 much of which was white. So it was -- it was difficult to  
11 add that population without endangering that 55 percent  
12 target.

13 Q And so I think you -- you testified to this, but 75  
14 moves north to pick up the southern part of what was House  
15 District 63. That's the first step, correct?

16 A Yes.

17 Q And then to compensate District 63 and add black  
18 voting population, this whole right arm was extended that  
19 went out to Hopewell; is that right?

20 A Yes. And just to be clear, the ending point -- for  
21 District 63, the HB 5005 African-American voting age  
22 population was 59.5 percent. So it ended up exceeding the  
23 target substantially. So this is a situation where it  
24 could have been drawn in a number of different ways to  
25 reach that target, but this is -- this is the -- these are

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1 the lines that were drawn.

2 Q All right. Let's take a closeup look at this. This  
3 is Figure 11 from your report on page 36, and it's on page  
4 37 of the illustrative exhibit, page 37. This is the  
5 eastern tentacle that moves out to the eastern end of  
6 House District 63; is that right?

7 A Yes.

8 Q So let's start first on the western side of this  
9 slide of this image of this map. How does it treat  
10 Chesterfield County?

11 A This is -- it reaches across the river and brings in  
12 an African-American neighborhood in the southern part of  
13 Chesterfield County and kind of draws the line right about  
14 at the line where there's a transition from  
15 African-American to white population. It comes over to  
16 the boundary of Colonial Heights, and there's a very sharp  
17 racial divide, we can see there, and the district line  
18 follows it.

19 Q Okay. So in Chesterfield County, was that split by  
20 HD 63 in the benchmark?

21 A It was.

22 Q Okay. And the split occurred right along racial  
23 lines; is that right?

24 A Yes. It was already that way in the benchmark.

25 Q So the part of Chesterfield that was included in



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1 House District 63 was the African-American portion?

2 A Yes.

3 Q And the part that was included in House District 66  
4 to the north is the white portion?

5 A Yes.

6 Q Okay. Now, you mentioned Colonial Heights. Is  
7 Colonial Heights an independent city in Virginia?

8 A Yes.

9 Q Is that the same as Hopewell?

10 A Yes. They are both independent cities.

11 Q So they are the same on that level. Is their racial  
12 composition the same or different?

13 A Colonial Heights is overwhelmingly white.

14 Q And how about Hopewell?

15 A It is heterogenous, but as we can see, residentially  
16 quite segregated.

17 Q Into a black area and a white area?

18 A Yes.

19 Q And Colonial Heights, did the map split Colonial  
20 Heights?

21 A No, it did not.

22 Q So it respected the borders of Colonial Heights?

23 A Yes.

24 Q And that's this border that deviates down and follows  
25 the line around; is that right?

Rodden - Direct

1 A Yes. We can see the green border of Colonial Heights  
2 in that image.

3 Q And then this arm that reaches out to split Hopewell  
4 divides it right along racial lines; is that right?

5 A Yes.

6 Q And the African-American portion of House District 63  
7 is included in -- in House District 63 is the city of  
8 Hopewell; is that right?

9 A Yes. That section of Hopewell is in 63.

10 Q And the white portion is included in House District  
11 62?

12 A Yes.

13 Q You said something about sharp -- the line was  
14 sharpened from before. Can you describe what you mean  
15 there?

16 A Well, I'm not sure. I can't see here where the  
17 boundary was before. It doesn't show --

18 Q We'll zoom in in a moment.

19 A But in any case, the divide here between the  
20 African-American -- part of the -- of Hopewell and the  
21 white part, the residential divide is rather clear. And  
22 the district line really -- I think the map shows very  
23 clearly that it follows that line quite precisely.

24 Q And when you say "that line," you mean the line  
25 dividing the white from the black population?

Rodden - Direct

1 A Yes.

2 Q And this is all new, right? This was drawn by HB  
3 5005?

4 A Yes. This area was not in District 63 before. This  
5 area was in District 74. So this is all -- these are all  
6 lines that were drawn in HB 5005.

7 Q Okay. While we're here, and looking at this part of  
8 House District 63, there's this -- I think we've called it  
9 the New Hope hook that kind of comes in. Did you examine  
10 that in your analysis?

11 A I did.

12 Q And what was the significance of that?

13 A Mainly it appears to be an effort to bring in enough  
14 African-Americans into District 75. I did note that there  
15 were a numbering of VTD splits that helped achieve that.

16 Q Were there a number of VTD splits in this arm that  
17 comes up around New Hope?

18 A Yes.

19 Q And what were those VTD splits, if you know? I think  
20 it's on page 37 of your report, if I'm not mistaken.

21 A Rohoic, Rives and Dinwiddie.

22 Q Okay. And New Hope itself?

23 A Yes. I believe it might be the part of New Hope that  
24 was split was an unpopulated part.

25 Q Now, do you recall the explanation offered for why

Rodden - Direct

1 all these VTDs were split and this arm reaching around?

2 A Well, my understanding is that there was an argument  
3 about a potential challenger that was being -- was -- the  
4 effort was to avoid putting that -- putting that  
5 challenger into the district.

6 Q Okay. And you were here for the testimony this  
7 morning --

8 A Yes.

9 Q -- with concern to that? And I won't repeat it. Was  
10 splitting all these VTDs required for the purpose of  
11 excluding that potential challenger?

12 A I have no idea.

13 Q Why not?

14 A Well, I don't know where that challenger was located.

15 Q Did you try and find that out?

16 A I asked for that information. It didn't seem that  
17 anyone had it.

18 Q Okay. And regardless, did Delegate Dance have a  
19 strong challenger the very next election?

20 A Yes.

21 Q So this was an effort to draw out a challenger from  
22 her district. I take it it was not successful?

23 A No.

24 Q Okay. Is there any significance to the way that they  
25 divided -- that the map divides Dinwiddie County to the

Rodden - Direct

1 south?

2 A Well, again, I think that is a divide that the  
3 Supreme Court has already determined was avowedly racial  
4 and was created for the purpose of increasing the black  
5 voting age population of District 75.

6 Q All right. Let's -- if we can zoom in on a Hopewell.  
7 This is page 39 of the illustrative exhibit, and I think  
8 it's Figure 12 from your report on page 38. Can you  
9 describe what this is?

10 A This is a dot density map that zooms in on part of  
11 Hopewell. In particular, it focuses on ward 7, but we can  
12 see several other wards here as well. And these are --  
13 this is such a close zoom that each dot represents one  
14 individual.

15 The dotted red line corresponds to the boundary of a  
16 VTD that is ward 7. But the other VTD boundaries are in  
17 solid red, but they are a little -- they are a little  
18 thinner. Another thing that's worth seeing here -- and  
19 this might be kind of useful more generally is that the  
20 very light gray lines are the block boundaries. So this  
21 is one map where I was zoomed in enough that I thought it  
22 made sense to show the block boundaries. So it's -- they  
23 are a little difficult to see, but it hope it communicates  
24 just how small are the census block. And so when we are  
25 splitting a VTD and moving blocks around, those are the

Rodden - Direct

1 building blocks. They are very some very tiny units that,  
2 in a town like this, can contain very few people, very  
3 small number of people.

4 And so what we see in this --

5 Q So let me stop you there and ask you another  
6 question. Hopewell ward 7 was split in the process here  
7 of drawing this map; is that right?

8 A Yes. So it's a little hard to look at so let me  
9 explain. The black boundary moves right along the ward 7  
10 boundary to the east. So we see that the VTD is not split  
11 as we move along the east. And that ward boundary  
12 actually corresponds rather well to a dividing line  
13 between African-Americans and whites. And that remains  
14 the case until we get down over to the west side of ward  
15 7.

16 And then when we get there, we see that instead of  
17 following the VTD boundary, which would have -- which  
18 would have placed an African-American neighborhood into  
19 District 62 and would have removed it from 63, there  
20 was -- there was kind of a -- the line that dips up in  
21 towards 7 and extracts that African-American neighborhood  
22 and places it into District 63.

23 Q And that -- okay. So the African-American --

24 JUDGE PAYNE: Excuse me, Mr. Hamilton. Is ward  
25 7 is the same thing as the VTD?

Rodden - Direct

1 THE WITNESS: Yes. In the city of Hopewell, the  
2 ward -- these wards are used at VTDs. And that's the case  
3 in a couple of other spots as well.

4 Q So if you wanted to -- well, let's strike that. Let  
5 me ask first, so the African-American neighborhood that is  
6 inside this little box here that was carved out, the VTD  
7 was split in a way to move that neighborhood into House  
8 District 69 -- House District -- whichever one we're on?

9 A Sixty-three.

10 Q Sixty-three; is that right?

11 A Yes.

12 Q And when you said a little while ago when you were  
13 describing the split of this city of Hopewell, you said it  
14 was a little bit more precise in the drawing of HB 5005.  
15 Is this what you were referring to?

16 A Yeah. What I was referring to is the fact that  
17 Hopewell was -- back when it was in District 74, it was  
18 also divided. But I don't believe it was -- it was -- I  
19 don't believe there were VTD splits along the way.

20 Q So this is sort of a fine tuning of that split to  
21 make it even more starkly sorted between the white areas  
22 and the black areas; is that right?

23 A Yes.

24 Q Now, maybe this is a good place to revisit our  
25 discussion about political information below the VTD

Rodden - Direct

1 level. If you -- if you -- if we're looking at the  
2 district as a whole, this ward 7 as a whole, you wouldn't  
3 know where the democrats live versus where the republicans  
4 live within that ward, at least not from census data?

5 A No. If I wanted to take out a knife and cut out the  
6 democrats and I only had the VTD level political  
7 information perhaps transferred down to the blocks, I  
8 wouldn't know where to cut unless I used race as a proxy  
9 for party. That's the only way I would be able to do  
10 that.

11 Q So let's just pause on that for a moment. Putting  
12 aside the question of whether that would be legally  
13 permissible or not, it would be possible to use -- because  
14 you do have race information at the census block level; is  
15 that right?

16 A It's one of the only things we have at the census  
17 block level. So those information are collected by the  
18 census department for the purpose of redistricting. But  
19 we don't have much else at the level.

20 Q So it would be possible to use race as a proxy --  
21 putting aside, again, the legality, whether it's legal or  
22 not, but it's possible to use race as a proxy for  
23 politics?

24 A Yes.

25 Q I won't ask you the legal question because I think



Rodden - Direct

1 Mr. Braden will object about whether that's legal or not.

2 Let me ask you this. Couldn't this VTD have just  
3 been split to equalize population? I think Mr. Braden  
4 said these were all done at the end and every one of  
5 them -- virtually every one of them was just done to  
6 equalize population.

7 A Well, I've drawn a lot of maps. I've done a lot of  
8 redistricting myself. And, indeed, when we have a tight  
9 population target, as we had in the House of Delegates in  
10 Virginia, at the end, after one moves around the VTDs and  
11 has the architecture, one is often off by a little bit of  
12 population. And that could be the case on two sides of a  
13 boundary. We can have two places that are a little bit  
14 off. So --

15 Q But my question is --

16 JUDGE PAYNE: That may be interesting, but it  
17 didn't respond to the question. Would you please just  
18 listen. Ask the question. Just answer the question, if  
19 you would, sir.

20 Q Isn't it possible that this VTD was split in this way  
21 to equalize population? Yes or no.

22 A It seems very unlikely for me for the reasons that I  
23 was trying to explain.

24 JUDGE PAYNE: The question was is it possible.  
25 That was the first question. In your view, yes or no, is

Rodden - Direct

1 it possible?

2 THE WITNESS: I would have to go with  
3 impossible.

4 JUDGE PAYNE: Impossible.

5 A Exceptionally unlikely.

6 Q Okay. And if we look at the screen, I've drawn a  
7 line to kind of lop off the end that kind of dips down to  
8 the south, you could draw a line there to split the VTD,  
9 right?

10 A You could draw the line in any number of places.  
11 That's why I went with impossible. I had to think for a  
12 moment.

13 Q And maybe this is just obvious, but in the line where  
14 I drew it, it's the white population that's being moved  
15 into House District 63, right?

16 A Yes.

17 Q And in the line where the map drawers drew it, it's a  
18 black population?

19 A Yes.

20 Q And we could draw the line sort of like that and get  
21 a little bit by both if we wanted to, right?

22 A Yes. The number of ways we could do it gets to be  
23 very large very fast.

24 Q And the point is when you're trying to equalize  
25 population, the color of one's skin doesn't matter, right?

Rodden - Direct

1 A No, it does not.

2 Q Because one person is one person for equalizing  
3 population?

4 A Yes.

5 Q Thank you. Let me -- let me just back up here as we  
6 leave the Richmond area and ask, for all of the districts  
7 around Richmond that we've been discussing in this entire  
8 region, did the legislature miss any majority black VTDs?

9 A No. All of the majority African-American VTDs are  
10 either wholly within or partly within one of the  
11 challenged districts in this region.

12 Q All right. Thank you. Let's move to the second area  
13 that I think you talked about, region. The Tidewater  
14 region; is that right?

15 A Yes.

16 Q And that's covered in your report starting on page  
17 41. What districts are located in the Tidewater?

18 A Here we have Districts 92 and 95, which are in the  
19 Virginia peninsula, and then we have Districts 80, 89, 90  
20 and 77 in South Hampton Roads.

21 Q All right. And the slide on page 41 of the  
22 illustrative exhibit, this is the area with just the  
23 racial data overlaid over the top of the entire region?

24 A Yes.

25 Q Okay. Let's turn to the next slide, which is on page

Rodden - Direct

1 42 of the illustrative exhibit. It's Figure 13 on -- from  
2 your report. This is the Tidewater benchmark districts;  
3 is that right?

4 A Yes.

5 Q And then the next slide on page 43, this is the  
6 Tidewater districts in HB 5005; is that right?

7 A Yes.

8 Q So if we go back and forth, we can see the changes  
9 here?

10 A Yes.

11 Q So 45 and -- page 45 and page 44 are probably the  
12 best contrast between these two. Fairly dramatic changes  
13 in this area, right?

14 A Yeah. The things that are really noticeable, I  
15 think, are -- perhaps three that are most noticeable. We  
16 see that large arm that comes out of 95 and follows the  
17 African-American population up Warwick Boulevard. We see  
18 that there had been an African-American population kind of  
19 the southern terminus of the bridge, starting right here,  
20 that had not yet been brought into one of the challenged  
21 districts, and it was brought into 80. And then we see  
22 again a little bit of expansion into the -- associated  
23 with African-American suburbanization to the east. So we  
24 see 90 expand its boundaries out and follow the  
25 African-American population a little bit more closely.

Rodden - Direct

1 And there were some changes in District 77 as well.

2 Q All right. Let's take a look first at House  
3 Districts 92 and 95. I believe you covered these two  
4 districts together in your report; is that right?

5 A Yes.

6 Q And why did you do that?

7 A These two districts are intimately connected. It's  
8 hard to understand the districting decisions of one  
9 without thinking about the implications for the other when  
10 it comes to both population and the 55 percent aspiration.

11 Q All right. Delegate Ward was the incumbent in  
12 District 92?

13 A Yes.

14 Q And Delegate BaCote was the incumbent in District 95?

15 A Yes.

16 Q So let me direct your attention to Figure 15 on page  
17 45 of your report, which is illustrative exhibit page 47.  
18 This is the districts after redistricting, with an overlay  
19 of the benchmark maps for House Districts 95 and 92; is  
20 that right?

21 A Yes.

22 Q Let's take a quick look through the same series of  
23 maps starting on page 48 of the illustrative exhibit.

24 This is the area of Districts 95 and 92; is that right?

25 A Yes.

Rodden - Direct

1 Q And then if we go to the next slide, page 49 of the  
2 illustrative exhibit, this shows the racial distribution  
3 of the population in the area?

4 A Yes.

5 Q And then the next slide, page 50, shows the  
6 benchmarks?

7 A Yes.

8 Q And the next one shows the adopted plan; is that  
9 right?

10 A Yes.

11 Q So here's one more. If we flip back and forth  
12 between the benchmark and the adopted plan, we can see  
13 some pretty significant changes here; is that right?

14 A Yes. The main changes involve adding arm to 95,  
15 moving some precincts from 95 to 92, and then some fine  
16 tuning on the eastern side of 92.

17 Q Can you describe the population and racial  
18 composition of these two districts at the time of the  
19 redistricting?

20 A The 92 benchmark population was 71,000. So it needed  
21 to gain 9000 people. Ninety-five benchmark population was  
22 68,000. So it needed to gain even more people to get up  
23 to 80,000. But both of them had a very large  
24 African-American voting age population at the beginning.  
25 They both had 60 percent. Ninety-two had a bit more than

Rodden - Direct

1 60 percent.

2 Q So -- so 95 was underpopulated by about 12,000  
3 people; is that right?

4 A Yes.

5 Q And 92 was underpopulated by about 9000 people; is  
6 that right?

7 A Yes.

8 Q Okay. So let's start with Newport News and Hampton.  
9 Can you describe how the map dealt with that area?

10 A Yes. The challenge here was to add population and  
11 then again, the -- in the immediate surrounding of the  
12 benchmark districts, we see there's not a lot of  
13 African-American population; that if we use traditional  
14 redistricting principles and we try to keep some  
15 compactness and contiguity, we would have trouble with the  
16 African-American voting population would fall rather  
17 quickly if we had that many individuals.

18 So the -- the solution to that seems to have been to  
19 bring some African-American population from 95 into 92 and  
20 then avoiding the need to -- to move District 92 further  
21 out into its surrounding areas. And then the -- then 95  
22 was able to -- to add African-American population by  
23 moving up to the north and including that long arm.

24 Q Okay. So this is the northern arm extending District  
25 95 sort of to the northwest; is that right?

Rodden - Direct

1 A Yes.

2 Q So maybe we can take a look at Figure 16 from page 47  
3 of your report. It's the next page. It's page 56 of the  
4 illustrative exhibits. What are we looking at here?

5 A This is simply the northern tip of that arm.

6 Q Okay. And there are four VTDs here, Jenkins,  
7 Denbigh, Epes and Reservoir. Do you see that?

8 A Yes.

9 Q Let me ask you first. Was any of this area in the  
10 benchmark map at all?

11 A No. This was not part of any of the challenged  
12 districts before.

13 Q So all the lines that we see here -- the reason we  
14 don't see any blue lines here is because there wasn't no  
15 benchmark lines up here in this district?

16 A Correct.

17 Q All right. How did the map treat these four VTDs?

18 A Well, each of these VTDs was split somewhere near the  
19 middle. But I think it's clear to see from the map that  
20 they were -- they were rather explicitly split along  
21 racial lines.

22 Q So maybe we can walk through Denbigh, the -- let's  
23 see. The very -- the southern most VTD is Jenkins; is  
24 that right.

25 A Yes. It has a funny shape. It starts over here, but



Rodden - Direct

1 it continues all the way over to the other side.

2 Q So there's a line that divides the eastern side of  
3 Jenkins from the western side of Jenkins; is that right?

4 A Yes.

5 Q And it's a relatively straight line?

6 A Yes.

7 Q And to the east -- at the risk of just stating the  
8 obvious, it pretty neatly follows exactly where the  
9 residential pattern is between black and white; is that  
10 right?

11 A Yes.

12 Q And then we go up a little bit further. The next VTD  
13 is Denbigh. Do you see that one?

14 A Yes.

15 Q And how is that VTD split?

16 A Initially, it's following the same major boulevard,  
17 which was Warwick, but then it kind of jogs off to the  
18 west a bit.

19 Q Okay. And then the next one up is -- at least as I'm  
20 pronouncing it, Epes, which might be wrong for which I  
21 apologize. How does it treat Epes?

22 A Again, we see a rather stark divide between the  
23 African-American neighborhood, which, on the east side of  
24 the boundary, contains a lot of multifamily houses and  
25 apartment complexes that have large African-American

Rodden - Direct

1 populations. And on the west side of that boundary are  
2 more single-family homes that have a greater percentage of  
3 white population.

4 Q Did you examine this area in some detail --

5 A Yes.

6 Q -- in preparing your -- and what did you find?

7 A Well, I found that the line kind of moves away from a  
8 major boulevard and it starts to follow a lot of  
9 residential streets and simply follows behind the  
10 apartment complexes. So it keeps the apartment complexes  
11 inside of 95 and keeps the neighborhoods on the other  
12 sides of these streets outside of 95.

13 JUDGE PAYNE: I'm having trouble following what  
14 you're saying about Epes. As I understand it, Epes ends  
15 at the right-hand side of the dark line that's there at an  
16 angle, and across the road over there is another VTD.  
17 That's -- is that right or wrong?

18 THE WITNESS: Well, I'll circle the boundary of  
19 the -- of the Epes VTD.

20 JUDGE PAYNE: Yeah. So I'm having trouble  
21 understanding where you're saying there's a racial divide.  
22 It looks like it's -- it's kind of generally gray in that  
23 whole area, all of Epes, and the only area that is lighter  
24 is across the road, which is in another VTD called -- I  
25 can't read it. And I'm --

Rodden - Direct

1 MR. HAMILTON: I think you're thinking of  
2 Nelson.

3 THE WITNESS: I'm speaking of the west side of  
4 this boundary.

5 JUDGE PAYNE: Well, where is the racial divide  
6 inside of Epes? Draw it on there and let me see what  
7 you're saying and then I can understand it.

8 There's a big lake there. Isn't that where the lake  
9 is the reservoir?

10 THE WITNESS: That's the gray part you see.  
11 There's no people there because there's a reservoir.

12 JUDGE PAYNE: I know exactly where it is. I'm  
13 trying to -- and I've been in the area. I'm trying to  
14 understand where you're saying the divide is.

15 MR. HAMILTON: He's dawn --

16 JUDGE PAYNE: Draw with you finger where you  
17 think the racial divide is in there.

18 THE WITNESS: I've drawn it with red dots along  
19 the section of this VTD that is split. So that's the  
20 split of the VTD.

21 MR. HAMILTON: And for the record --

22 JUDGE PAYNE: Originally, Epes went down to the  
23 Nelson line. Is that what you're saying?

24 THE WITNESS: Yes. The Epes VTD extends to the  
25 Nelson line.

Rodden - Direct

1 JUDGE PAYNE: Originally.

2 THE WITNESS: The VTD is the VTD. It -- this --  
3 what happens is the electron administrators now have to  
4 print separate ballots for people who come to vote at this  
5 precinct.

6 JUDGE PAYNE: That's not what I'm asking you.

7 THE WITNESS: It's still --

8 JUDGE PAYNE: The black line is the end of the  
9 Epes line as it stands now in your number 56. Is that  
10 correct or incorrect?

11 THE WITNESS: The Epes VTD extends all the way  
12 to the red line that separates --

13 JUDGE PAYNE: To the Nelson line?

14 THE WITNESS: Yes. But the District 95 cuts  
15 through and slices the Epes VTD at the point of that line.

16 JUDGE PAYNE: Okay. I understand.

17 Q So maybe I can help establish the record here. The  
18 little dots that you drew, it's the black line that  
19 separates Epes, that splits the VTD. It goes from right  
20 at the southern part of the Epes border and follows that  
21 thick black line to the north until it jogs just a little  
22 bit west and then -- and then stops there; is that right?

23 A Yes.

24 Q And to the east is the African-American part of Epes;  
25 is that right?

Rodden - Direct

1 A Yes.

2 Q And to the west, there's a -- is a white or Caucasian  
3 part of Epes?

4 A Yes.

5 Q And the border of the Epes VTD is on the far side of  
6 the white population where it bumps into the Nelson or  
7 borders the Nelson VTD; is that right?

8 A Yes.

9 Q So the split that we're talking about is that split  
10 right between there; is that right?

11 A Yes.

12 Q And that is a division between white population and  
13 black population, at least according to the United States  
14 Census data?

15 A Yes.

16 JUDGE PAYNE: Wait a minute. Excuse me. Your  
17 view is that where the line of 95 cuts through that VTD,  
18 that the left part of the Epes, which is down to Nelson,  
19 is all white?

20 THE WITNESS: No. I don't -- I believe --

21 JUDGE PAYNE: That's what the answer was. You  
22 didn't mean that, though, did you? It's mixed.

23 THE WITNESS: Oh, I certainly didn't mean that  
24 it's all white. It's --

25 JUDGE PAYNE: It's predominately white.

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1 THE WITNESS: Yes. Thank you, Your Honor.

2 JUDGE PAYNE: I think it's better to be precise  
3 in the question and the answer because the record would be  
4 wrong that you just made if you did it the way you did it.  
5 All right.

6 MR. HAMILTON: Thank you, Your Honor. I stand  
7 corrected.

8 Q So Epes was split so that the predominately  
9 African-American side was to the east and the  
10 predominately Caucasian side was to the west; is that  
11 right?

12 A Yes.

13 Q And you testified it went -- okay. So then  
14 continuing north from there, it follows the Reservoir  
15 border, the southern part of the Reservoir border up, and  
16 then divides the Reservoir VTD as well; is that right?

17 A Yes. And I'm adding -- I was adding some red dots  
18 there.

19 Q Okay.

20 A But this said divide is -- that's the line of the  
21 divide for the Reservoir VTD.

22 Q And the Reservoir VTD to the north is more  
23 predominately African-American; is that right?

24 A Yes.

25 Q And to the southern part of the Reservoir VTD is the

Rodden - Direct

1 predominately white portion of the VTD; is that right?

2 A Yes.

3 Q Okay.

4 JUDGE PAYNE: Do you have a way -- take the  
5 Reservoir VTD that you just talked about. Do you have a  
6 way of quantifying what -- the number of black dots and  
7 the number of white dots in the area that you're calling  
8 the predominately black section and the number of white  
9 dots and the number of black dots in the area that you're  
10 calling the predominately white section?

11 THE WITNESS: Dr. Palmer has the precise  
12 information in his report. So I don't have those numbers  
13 in front of me, but I believe that will -- that will be --  
14 that testimony will follow mine.

15 MR. HAMILTON: I think there's an analysis of  
16 the split VTDs. I'm not certain of that. I'll have to  
17 check during the break, but I think there may be an  
18 analysis of the comparative numbers here.

19 Q So same question. Couldn't these two VTDs have been  
20 split this way just to achieve population equality between  
21 the two districts?

22 A Again, when we're trying to achieve population  
23 equality between two districts, we don't need to split  
24 multiple VTDs in this way. So the answer is no.

25 Q And for -- if it were done for political reasons,

Rodden - Direct

1 other than using race as a proxy for politics, would there  
2 be any other way of determining the political composition  
3 at the census block level?

4 A No.

5 Q Okay.

6 JUDGE PAYNE: Is this a convenient place to take  
7 a break?

8 MR. HAMILTON: It is, Your Honor.

9 JUDGE PAYNE: All right. We'll take 20-minute  
10 afternoon recess.

11 (Recess taken.)

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1 JUDGE PAYNE: All right, sir. Do you have enough  
2 water over there, Dr. Rodden?

3 THE WITNESS: I think so. I've got two glasses.

4 JUDGE PAYNE: We're going to take one away.

5 MR. HAMILTON: That will be another problem. May I  
6 proceed, Your Honor?

7 JUDGE PAYNE: Yes.

8 Q Sir, I want to clarify one thing. We had this discussion  
9 about where the dividing lines of the Epes VTD at the northern  
10 end of House District 95 was. On page 56 of the illustrative  
11 exhibit, which is figure 16, page 47 of your report, when we  
12 look at the Epes VTD, the district boundary created by House  
13 Bill 5005 for HD 95 is denoted by the heavy black line;  
14 correct?

15 A Yes.

16 Q And the underlying VTD boundary, in this case Epes, is  
17 demarked with a narrow red line; is that right?

18 A Yes.

19 Q Then there are places where the two overlap, and, of  
20 course, you can't see the red line because the black line is  
21 obscuring it; is that right?

22 A Yes.

23 Q Thank you. I just wanted to make sure that was clear for  
24 the record. You mentioned earlier in your testimony the  
25 transfer of African Americans from District 95 to 92? Where

1 did that happen?

2 A There were VTDs called Mallory, Forrest, and Kraft, and  
3 those were moved from District 95 to 92.

4 Q Okay. Were they densely populated?

5 A Yes.

6 Q And together, these three VTDs, Mallory, Forrest, and  
7 Kraft, how many African-American voting-age population -- or  
8 how many African-American population, put aside voting-age, did  
9 that include?

10 A Yes. It increased the population, including  
11 African-American population, by 8,000. So just with the moves  
12 of those VTDs, it was possible to approximate the population  
13 threshold.

14 Q And then the voting-age population is something slightly  
15 less than that, about 6,200; is that right?

16 A Yes.

17 Q So if District 92 needed population -- maybe we can go  
18 back to the earlier combined map. Illustrative Exhibit 47,  
19 this is your figure 15 on page 45 of your report, discuss just  
20 looking at this, if District 92 needed population, how would  
21 one add population without regard to race but respecting more  
22 traditional redistricting criteria? What other options were  
23 there?

24 A We see the way District 92 had been drawn before, there  
25 was a strip of -- along the coast to the -- on the far east

1 side of this map that was excluded from the districts. So  
2 there was a little strip, and so it seems that a way to  
3 increase population, while also enhancing the compactness of  
4 the districts in the area, would be to simply bring the  
5 district boundary over and include that coastal strip.

6 Q So if we want to compare the benchmark to the HB 5005 in  
7 the way that House District 92 has changed, we would look at  
8 Illustrative Exhibit 50 and 51 -- is that right? -- showing the  
9 benchmark, and then the House Bill 5005, that might be an  
10 easier way to look at it, at least on the screen here.

11 JUDGE PAYNE: 50 and 51?

12 MR. HAMILTON: That's right, Your Honor. 50 is the  
13 benchmark. 51 is the districts as adopted in the 5005.

14 Q This area, this coastal sliver you were just talking  
15 about, is it right there on the side of that appendage sticking  
16 out in your Hampton?

17 A Yes. That's just one area that is noticeable that it  
18 seems traditional redistricting principles would involve. Not  
19 creating that little tentacle coming down from the district  
20 above.

21 Q Anywhere else?

22 A Seems like it might have also been straightforward to  
23 straighten out this line, you know, do some things like that,  
24 and all of these moves, though, given the existing lines, they  
25 would have brought in white population from the surroundings.

1 Q Let me ask you this: If we look at the construction of  
2 these two districts, 95 and 92, is this an area where the  
3 55 percent black voting-age population target constrained the  
4 map drawers in a significant way?

5 A It constrained them to some extent, but certainly I think  
6 it almost goes without saying that when the final numbers are  
7 60.7 and 60 percent, then there were many different ways to  
8 achieve the 55 percent target. And, in fact, these districts  
9 ended up with an African-American voting-age population five  
10 percent higher than that.

11 So it is certainly not the case that every one of these  
12 little squibbles we're looking at is somehow crucial to the  
13 achievement of the 55 percent target.

14 Q Let's take a closer look at this eastern side of House  
15 District 92. If I can direct your attention to figure 17 on  
16 page 50 of your report, and I think we have a slightly clearer  
17 image on page 54 of the illustrative exhibit, 54, which is this  
18 eastern appendage. Can you describe what we're looking at  
19 here?

20 A This is just the eastern appendage we were just looking at  
21 of House District 92, the enacted version. Black line is the  
22 district boundary.

23 Q And can you describe -- we don't have one that, an  
24 illustrative exhibit that shows the benchmark. Can you  
25 describe some of the changes that were made to form these

1 boundaries in this area from the benchmark to 5005.

2 A I believe the Phoebus VTD to the southeast, kind of near  
3 the bottom of the map, that had been in the district before,  
4 and it was removed. And there was a small section up in the  
5 northeast that was --

6 Q Small section of the Ashbury?

7 A Somewhere up there. There was a section that was moved.

8 Q How do the lines, as selected, correspond to the  
9 African-American and white communities in this area?

10 A Again, I think the -- this is one of those situations  
11 where the VTD boundaries themselves are roughly at the border  
12 between where the population transitions from being more  
13 African American to more white and that the maps just highlight  
14 that this is an area where that transition is relatively stark.

15 Q I suppose you mean some of the VTD lines in this area  
16 demark the lines between the African Americans and the white  
17 population; correct?

18 A That's right. There is some VTDs --

19 THE COURT: Predominantly, is that what you meant?

20 MR. HAMILTON: That's what I meant, Your Honor. I  
21 apologize.

22 A There's some VTDs where achieving a finer division would  
23 have required VTD splits, and those were not pursued.

24 Q For example, the Serna VTD, I think that's what this is --  
25 Syms. Sorry, Syms VTD just sort of in the center of the map.

1 The northern boundary of that doesn't correspond with a  
2 division between predominantly white and predominantly black  
3 population areas; correct?

4 A Correct.

5 Q That wasn't chosen?

6 A No.

7 Q Instead, they chose the northern boundary of the Smith VTD  
8 and the, looks like Keycogan (phonetic) VTD and the Jones VTD  
9 in order to draw the boundary of this northern extension; is  
10 that right?

11 A Yes.

12 Q Those align precisely with the division between the  
13 predominantly African American and predominantly white areas;  
14 correct?

15 A Yes.

16 Q And what about if we move to the western side of the  
17 district, this VTD Tyler, was that in the benchmark like this?

18 A Yes, I believe it was.

19 Q And how does that align -- so I gather -- let me stop and  
20 ask first, did the legislature choose to keep that Tyler VTD in  
21 House District 92 or move it?

22 A It was kept.

23 Q How does the boundaries of that VTD align with the  
24 demarcation line between the predominantly African-American  
25 portions of the district and the predominantly white portions

1 of the district?

2 A The northern part of that line creates a rather sharp  
3 divide. On the eastern side of that little extension, the  
4 African-American population does spill over a bit into the  
5 surrounding VTD.

6 Q What net effect did the changes have -- the changes drawn  
7 on HD 92 have on the district?

8 JUDGE PAYNE: On 92?

9 MR. HAMILTON: On 92, yes.

10 A The African-American voting-age population stayed roughly  
11 similar. It fell a bit, but it was -- the most important  
12 change was the move in from -- of some of those VTDs on the  
13 west from 95 to 92.

14 Q Now, in this Court's original memorandum opinion, the  
15 Court suggested that in drawing Districts 95 and 92, the  
16 legislature had passed by, quote, areas that have more black  
17 voters, close quote. Were there any significant areas --  
18 rather were there any areas with significant predominantly  
19 African-American population that were passed by in this area?

20 A There are kind of isolated pockets within VTDs of African  
21 Americans, but there are no majority African-American VTDs that  
22 could have been added in this area.

23 Q Why is that? Had HB 5005 already pulled in the vast  
24 majority of VTDs with majority African-American population?

25 A In the area around the cities, certainly, but not in that

1 area that reached up to the north in 95 that we looked at.

2 Q And how did House Bill 5005 treat that area to the north?

3 A It created an extension that, from the maps, I think it's  
4 clear that it brought in a large number of African Americans.

5 Q Let's turn to House District 80, if we might. Let me  
6 direct your attention to figure 18 on page 53 of your report.  
7 This is page five of the illustrative -- 58 of the illustrative  
8 exhibit. This is House District 80; is that right?

9 A Yes.

10 Q So if we click through a few slides here, illustrative  
11 exhibit page 59 is just the straight VTDs of the area; is that  
12 right?

13 A Yes.

14 Q Page 60 is the racial data overlaid; is that right?

15 A Yes.

16 Q 61 is the benchmark?

17 A Yes.

18 Q And page 62 of the illustrative exhibit is the final bill;  
19 is that correct?

20 A Yes.

21 Q So if we go back and forth between page 61 and 62, we can  
22 see the changes that were made here; is that right?

23 A Yes. The clearest changes, just on first glance, are the  
24 extension to the west, to those African-American VTDs to the  
25 west that had not previously been included in the challenged



1 district, and there was a loss of the Berkley VTD on the east  
2 and some other changes on the east as well.

3 Q Can you describe the population and racial composition of  
4 House District 80 at the time of the redistricting?

5 A This is another one of those urban districts that had lost  
6 relative population. So it was -- started with 70,500  
7 population roughly. So it needed to gain roughly 9,500 people,  
8 and it started with an African-American voting-age population  
9 that was below 55 percent. So it was 54.4 percent.

10 Q What's the issue? If we were to look at the benchmark and  
11 understand that we need to add 9,000 people to this district,  
12 what's the challenge?

13 A It's a similar problem to what we saw in some of the  
14 Richmond urban districts, that it is surrounded by whites and  
15 it is surrounded by African Americans who are already in  
16 African-American majority districts that if they would lose  
17 them, they might run into trouble with the 55 percent  
18 threshold.

19 So in this situation, it was necessary to be careful about  
20 which VTDs were added and to find a way to bring up the  
21 population substantially without bringing in too much white  
22 population relative to African-American population.

23 Q All right. So we know from looking at the map how they  
24 solved this problem which is going off to the west, picking up  
25 VTDs marked 33, 34, 38, Taylor Road, Yeates, Harbor View. Was

1 that significant to your analysis here, that extension out to  
2 the west, and if so, why?

3 A That made it possible to add African-American population  
4 without taking population from any of the other districts that  
5 were very close to the threshold.

6 Q Now, in the prior trial, there was some discussion about  
7 whether this was an incumbent protection effort. Did you  
8 examine that proposition?

9 A I didn't fully understand the proposition, but I couldn't  
10 find a way in which that would work.

11 Q So the suggestion was that Delegate Joannou, the delegate  
12 in District 79 just to the north wouldn't have -- he was -- he  
13 wouldn't have wanted to move -- to have District 80 expand,  
14 say, for example, into VTD 30, 22, 23, 24, 25, that sort of  
15 middle area right in the dead center of the map.

16 JUDGE PAYNE: Mr. Hamilton, how can he know what  
17 Delegate Joannou wanted?

18 MR. HAMILTON: I'm not asking him what Delegate  
19 Joannou --

20 JUDGE PAYNE: You said he wouldn't want it.

21 MR. HAMILTON: Say again?

22 JUDGE PAYNE: You said, I thought, he wouldn't want  
23 that.

24 MR. HAMILTON: I said I was repeating testimony from  
25 the earlier trial. I'll ask another question, Your Honor.

1 Q Is it plausible -- did you examine whether it would be --  
2 that would have, in fact, offered protection for Delegate  
3 Joannou, if you know?

4 A I looked at the precinct level, results of primaries, and  
5 general elections that had occurred previously.

6 Q What did that reveal?

7 A That was a strong -- the neighborhoods that he lost were  
8 strong neighborhoods for him, and there seems to be -- he  
9 eventually lost in a primary to an individual who had a base  
10 that was in a neighborhood that was to the east, and he lost  
11 his seat.

12 Q That was after the redistricting?

13 A Right after redistricting, yes.

14 Q Did you examine whether it was an incumbent protection or  
15 could have been drawn this way to protect Delegate Matthew  
16 James?

17 A Yes, I considered that.

18 Q What did you conclude?

19 A It was hard for me, as a political scientist, to see how  
20 that would work since he lost some of the neighborhoods in  
21 which he had received really strong support in the past,  
22 especially on the east side of the district.

23 Q Which VTD is that?

24 A Berkley in particular.

25 Q And do you recall what -- in his last contested election,

1 how Delegate James faired in 2009 in the Berkley VTD?

2 A He received 96 percent of the vote there.

3 Q Thank you. This extension, the westward extension, did  
4 that create an additional river crossing, water crossing?

5 A Yes.

6 Q Can you point out where that is? There was already one  
7 water crossing here?

8 A Yes, over -- there was already a water crossing here.

9 Q And one of the other changes in this district is this  
10 eastern segment -- I'll just circle it -- to the north, Taylor  
11 Elementary School, Old Dominion. Are those largely  
12 predominantly white VTDs?

13 A Yes.

14 Q And those were removed from House District 80 in the  
15 redistricting; is that right?

16 A Yes.

17 Q And then out to the west, these areas that we've just been  
18 talking about, Yeates, Taylor Road, 38, are those, by  
19 comparison, more heavily African-American populations there?

20 A Yes.

21 Q Thank you. Let's cross the river to the north and look at  
22 HD 89, and if I can direct your attention to figure 19 on page  
23 56 of your report which is page 64 on the illustrative exhibit.  
24 The incumbent here was Delegate Alexander?

25 A Yes.

1 Q If we click through a few slides quickly, first one is the  
2 area for District 89; is that right?

3 A Yes.

4 Q Page 65, and then the next one on page 66 of the  
5 illustrative exhibit is the population density overlaid?

6 A Yes.

7 Q And then the next one on page 67 of the illustrative  
8 exhibit is the benchmark?

9 A Yes.

10 Q The next page, 68, is the final adopted plan; is that  
11 right?

12 A Yes.

13 Q So we can flip back and forth, and we can see the changes  
14 that were made here between the benchmark and the final plan;  
15 is that right?

16 A Yes. So here we see, above all -- I believe this was also  
17 discussed earlier today -- the eastward extension of 89 to take  
18 some VTDs from 90, some African-American VTDs down there to the  
19 south and also the extension across the river to Berkley.  
20 That's on the southern side. Then we see some changes in  
21 fine-tuning to the boundaries over on the north as well.

22 Q Can you describe the population and racial composition of  
23 this district at the time of the redistricting?

24 A This was, again, an urban district that needed population.  
25 So it needed almost 6,000 additional population, and this was,

1 perhaps, the biggest problem in the region for the 55 percent  
2 BVAP target, because it started at 52.5 percent. So it's below  
3 the target, and it needs to add substantial population.

4 Q So how did it add that population?

5 A It added population in a few different spots, and I just  
6 went over some of them briefly. But it added those VTDs that  
7 came from 90, those heavily African-American VTDs to the south,  
8 and it --

9 Q Let's see here. Let's start with the northern part of the  
10 district. There is a VTD of Rosemont; do you see that in the  
11 very north?

12 JUDGE PAYNE: It's hard to read.

13 MR. HAMILTON: It is. I agree with that, Your Honor.  
14 I'll circle it on the screen to make it obvious for the record.  
15 It's sort of the northeastern corner of the district outlined  
16 by the black line.

17 Q Rosemont was in the benchmark to begin with; is that  
18 right?

19 A Yes.

20 Q And it's heavily or predominantly African-American  
21 population?

22 A Yes.

23 Q And then what's the next VTD to the west? Is that  
24 Suburban Park?

25 A Suburban Park, yes.

1 Q Was that in the benchmark House District 89?

2 A Yes, it was.

3 Q What's the racial composition of Suburban Park?

4 A It's predominantly white.

5 Q And that was carved out?

6 A Yes.

7 Q Then we move one more VTD to the west. The next one is  
8 Granby; is that right?

9 A Yes.

10 Q And was the Granby VTD split?

11 A Yes, it was.

12 Q I think we have a closer image of that split. Figure 20  
13 in your report, page 58, it's on page 69 of the illustrative  
14 exhibit. This is a close-up of these two VTDs, Suburban Park  
15 and Granby?

16 A Yes.

17 Q There was -- we have this strange shaped pipe in the  
18 Granby precinct; do you see that?

19 A Yes.

20 Q Can you describe -- this is a split of this VTD; is that  
21 right?

22 A Yes.

23 Q So the district line, again, the district line is this  
24 black line that goes through the middle that forms this sort of  
25 pipe area?

1 A Yes.

2 Q And where is the outer edges of the Granby precinct?

3 A They're right here.

4 Q All right. So the black line splits the top half of the  
5 Granby precinct. Can you describe how that split is  
6 effectuated?

7 A As the split comes up Granby -- well, this district  
8 boundary, the VTD boundary, both of those come up Granby Avenue  
9 sort of like this, and then we see while the VTD continues up,  
10 the boundary then shifts this way and kind of goes -- takes an  
11 abrupt upward turn and then kind of comes back again right to  
12 the south of a group of dense apartment complexes and comes up  
13 again and --

14 Q For the record, because the court reporter can't take down  
15 the little dots on the screen, you've outlined on the screen  
16 some little dots that outline this pipe-shaped figure that  
17 forms the split of the Granby VTD right in the center; is that  
18 correct?

19 A Yes.

20 Q Now, is it possible that this line just happened to be  
21 drawn this way for the purposes of balancing population and  
22 this is just a coincidence it skirts right around to carve out  
23 this relatively predominantly white area out of the center of  
24 the VTD?

25 A It seems very unlikely.



1 Q Delegate Jones testified at trial in 2015 that this  
2 appendage was added to District 89 in order to include a  
3 funeral home owned by Delegate Alexander that was located right  
4 in the middle of that pipe. Let me ask you, did you examine  
5 that proposition?

6 A I examined the location of the funeral home just to see  
7 where it was.

8 Q Did you find the website for Delegate Alexander's funeral  
9 homes?

10 A Yes.

11 Q Is there a funeral home in the Granby VTD?

12 A It is on the other side of the street in the Suburban Park  
13 VTD.

14 Q So let me ask the question again. Is there a funeral home  
15 owned by Delegate Alexander in the pipe in the Granby precinct?

16 A No.

17 Q And you mentioned that there is a funeral home in the  
18 Suburban Park VTD; did I hear you correctly?

19 A Yes.

20 Q Have you marked that on figure 20, page 58 of your report  
21 with a black dot?

22 A Yes.

23 Q And that's in the Suburban Park VTD?

24 A Yes.

25 Q And you labeled it Metropolitan Funeral Home or Funeral

1 Service?

2 A Yes.

3 Q So had Delegate Jones wanted to keep Delegate Alexander's  
4 funeral home in his district, what would he have had to do?

5 A The easiest thing would have been just to have kept the  
6 Suburban Park VTD in the district.

7 Q Because it was already in the district.

8 A Yes.

9 Q At the risk of asking a stupid question, was it necessary  
10 for Delegate Jones to draw this pipe-shaped figure in Granby to  
11 include the funeral home?

12 A No.

13 Q By the way, for the record, what is the specific street  
14 address for Delegate Alexander's funeral home?

15 A 7246 Granby Street, Norfolk, Virginia.

16 Q That's included in your report; is that right?

17 A Yes.

18 Q And the funeral home, that funeral home actually ended up  
19 being drawn into what district?

20 A I believe that's District 100.

21 Q Couldn't he have just confused the name of the street with  
22 the name of the neighboring VTD?

23 A That's possible.

24 Q And if he confused the two, would he have drawn the map  
25 the way it was drawn here? Is that possible?

1 A Well, no. The funeral home is not in the part of the  
2 district where the pipe is -- was drawn.

3 JUDGE PAYNE: Where is the funeral home? You said  
4 page 58, but that didn't relate to House District 89.

5 MR. HAMILTON: In the illustrative exhibit, Your  
6 Honor, it's on page 69. In his report, his expert report,  
7 which is Plaintiff's Exhibit 69, it's on page 58.

8 JUDGE PAYNE: So it's to the east of Granby Avenue.

9 MR. HAMILTON: Correct. Suburban Park, yeah.

10 JUDGE PAYNE: And south of -- what are you calling  
11 that; a pike or a pipe?

12 MR. HAMILTON: A pipe, p-i-p-e. I think that's the  
13 way it was referred to in the memorandum opinion, but I'm not  
14 sure.

15 Q Was it difficult to find the address of this funeral home?

16 A No.

17 Q How did you do it?

18 A Just found it on the internet.

19 Q Approximately how long did it take?

20 A 30 seconds.

21 Q Does Delegate Alexander have other funeral homes?

22 A I believe so.

23 Q Where else?

24 A One is on Berkley Avenue in Norfolk, and that's in the  
25 Berkley VTD as well. And there is one on Portsmouth Boulevard

1 in Portsmouth.

2 Q So the location in Portsmouth was never, at any time, in  
3 House District 89; is that right?

4 A I believe that's right.

5 Q It wasn't in the benchmark.

6 A Right.

7 Q Wasn't in the adopted plan.

8 A Correct.

9 Q The one in Berkley VTD was not in the benchmark  
10 District 89; is that right?

11 A That's correct.

12 Q But it did end up in the district in the adopted plan.

13 A That's correct.

14 Q But it required adding a river crossing to get there?

15 A Yes.

16 Q And stripping the Berkley precinct out of District 80; is  
17 that right?

18 A Yes.

19 Q And the third location was in Suburban Park. That one was  
20 in the benchmark District 89; is that right?

21 A Yes.

22 Q But was taken out by Delegate Jones in -- or by the House  
23 Bill 5005; correct?

24 A Correct.

25 Q Let's turn our attention to District 90.

1 MR. HAMILTON: Your Honors, this is illustrative  
2 exhibit page 70.

3 Q District 90 is in the South Hampton Roads area; is that  
4 right?

5 A Yes.

6 Q I can turn your attention to page 17 of the illustrative  
7 exhibit, figure 21, page 59 of your report. The incumbent here  
8 was Delegate Howell; is that right?

9 A Yes, that's right.

10 Q So maybe we can get click through these slides quickly.  
11 Page 27 of the illustrative exhibit is the VTDs. Page 37 is  
12 the VTDs with the racial data superimposed on top. Page 47 is  
13 the benchmark, and page 75 is the final map; is that right?

14 A That's right.

15 Q So if we go back and forth, we can see how this map  
16 changed from the benchmark to the final adopted map; is that  
17 right?

18 A Yes.

19 Q Can you describe for the Court the population and racial  
20 composition of this district at the time of redistricting?

21 A Yes. This is another urban district that was short of  
22 population. It started out -- the benchmark district was  
23 71,000 people, so it needed to add 9,000, and the  
24 African-American voting-age population at the beginning was  
25 56.9 percent.

1 Q So let's start on the eastern edge of this district. What  
2 happened here?

3 A On the eastern edge, the district simply expanded outward,  
4 out to the east. It included some new VTDs that had not been  
5 there before.

6 MR. HAMILTON: And I think we have a blowup of this  
7 area on page 77 of the illustrative exhibit. It's, for the  
8 record, page 77 in the illustrative exhibit and figure 22, page  
9 60 of his report.

10 Q This is a close-up of this area; is that right?

11 A Yes.

12 Q And were VTDs split in this area?

13 A Yes. In this image, the Shell VTD was split as well as  
14 the Aragona VTD.

15 Q And if we look at the outer edge before we get to the  
16 split VTDs, this whole outer edge was drawn by HB 5005;  
17 correct?

18 A That's right.

19 Q The blue line is the old benchmark district that appears  
20 in this figure; is that right?

21 A Correct.

22 Q So how was -- let's start with Shell. How was the Shell  
23 VTD split?

24 A We can see the movement of the black line through the  
25 Shell VTD, and it was split in such a way as to keep the -- the

1 part of Shell that had a relatively large African-American  
2 population, relative to the east side, was kept in the  
3 district, and then the eastern part where there was a  
4 relatively larger white population was kept out of the  
5 district.

6 Q And how about the Aragona VTD, you said that one was split  
7 as well?

8 A Yes.

9 Q How was that split?

10 A We can see that the split is on the far east there. The  
11 Aragona VTD continues all the way through -- off the area  
12 covered by the map, and it's a largely -- largely predominantly  
13 white area in the rest of the VTD off to the right, and the  
14 area to the west of the line is predominantly African American.

15 Q Let's take a look at the southern part -- close-up of the  
16 southern part of the district now. This is, of the  
17 illustrative exhibit, page 76. In his report, it's page 61,  
18 figure 23. So this is a close-up of the southern part of the  
19 district; is that right?

20 A Yes.

21 Q Can you describe what this tells us, what we can learn  
22 from this?

23 A Some of this was discussed earlier today, but there is  
24 population to the west in this figure that was dropped from the  
25 district, and the district developed this tentacle over here to

1 the south that crossed the river and brought in the VTDs of  
2 Sherry Park, College Park, and then part of the Reon VTD.

3 Q Was the Reon VTD split?

4 A Yes, it was.

5 Q How was that split?

6 A We can see that the line dips down and around and back up  
7 again and that that dip does correspond to -- a neighborhood  
8 that has a condominium complex that is predominantly white that  
9 is seems to be carved out of the district and kept in the  
10 surrounding district.

11 Q Was this line added as part of HB 5005, or did it exist in  
12 the benchmark as well?

13 A It was added as part of HB 5005.

14 Q And did it have the effect of sorting the predominantly  
15 white areas from the predominantly African-American areas?

16 A Yes.

17 Q Is that consistent with the pattern you've seen elsewhere  
18 in the plan?

19 A Yes, very similar to the other VTD splits we've been  
20 looking at.

21 Q Do the lines in District 90 reflect attention to race?

22 A Yes.

23 Q And how so?

24 A Well, District 90 in general, as I believe I described --  
25 and it might be helpful to zoom back out to the overall --



1 Q That would be page 17 of the illustrative exhibit, figure  
2 21, page 59 of the report. That one?

3 A Yes. So there were VTDs to the immediate west that were  
4 moved over to the District 89 to help District 89 increase its  
5 African-American voting-age population, and then there were  
6 VTDs that -- the VTDs we've been discussing over to the east  
7 which were predominantly African American that were added, and  
8 then there was some white VTDs to the southwest that were moved  
9 over to District 77.

10 Q All right. Let's move to District 77 then, a little bit  
11 to the west. If I can turn your attention to figure 24 on page  
12 63 of your report. That's the illustrative exhibit at page 79.  
13 The incumbent here was Delegate Spruill?

14 A Yes.

15 Q And we can click through some maps quickly here. Page 80  
16 is the base area. 81 is the area with the population  
17 distribution and race information. 82 is the benchmark map,  
18 and 83 is the final map. So if we go back and forth between  
19 page 82 and 83, we can see the changes that were made; is that  
20 right?

21 A Yes.

22 Q Can you describe the changes that were made?

23 A Some of them have already been described. There were a  
24 number of predominantly white VTDs that had been in the  
25 districts we were just discussing, District 90, that were moved

1 over to 77, and then we see that along the long strip -- this  
2 is a district that I think is fairly clear is designed to  
3 combine African-American populations in Chesapeake and Suffolk.  
4 The line that the strip that reaches over to Suffolk changed in  
5 a number of places. And then there were some changes out in  
6 the west, in the Suffolk area as well.

7 Q Can you describe the racial and population composition of  
8 this district at the time of redistricting?

9 A Yes. District 77 had an overall population of almost  
10 77,000, so it only needed to gain -- it needed to gain some  
11 population but not as much as some of the other districts. And  
12 it had an African-American voting-age population of around 57  
13 and a half percent. So it was just a bit over the target.

14 Q Let's take a closer look at the east end of this district.  
15 It's page 84 of the illustrative exhibit, figure 25 on page 64  
16 of your report. This is a close-up of the eastern edge; is  
17 that right?

18 A Yes.

19 Q So let's focus on these four VTDs, Oaklette, Tanglewood,  
20 Norfolk Highlands, and Indian River. What were the combined  
21 voting-age population of those four VTDs?

22 A The combined voting-age population of 11,231.

23 Q Of those, how many were African Americans?

24 A 3,169.

25 Q So predominantly a white population in this area?

1 A Yes.

2 Q And those were added to House District 77?

3 A Yes. They were removed from District 90 and moved over to  
4 77.

5 Q And what effect did that have on House District 90?

6 A In and of itself, it pushed the African-American  
7 voting-age population down by bringing in a large number of  
8 white population.

9 Q And how did that interact with the racial -- or with the  
10 effort to reach -- if it did at all, the effort to reach the  
11 55 percent black voting-age population in these two districts,  
12 90 and 77?

13 A If there aren't some compensating moves elsewhere, then it  
14 creates the danger of falling below the threshold.

15 Q So what was happening here between these two districts?

16 A Population moved from 90, it has helped district 90 reach  
17 the target, and then in District 77, it was necessary to make  
18 some compensating moves.

19 Q So this is a transfer of a large number of white  
20 voting-age population from 90 to 77 in order to facilitate the  
21 achievement of 55 percent black voting-age population in both;  
22 is that fair?

23 A It's possible. There are other ways to have achieved  
24 that, but that's the effect that this change had.

25 Q Now, in this Court's original memorandum opinion, the

1 Court commented that some of the changes reunited the old city  
2 of South Norfolk. Do you recall that observation?

3 A Yes.

4 Q And did you examine it?

5 A Yes.

6 Q And what did you find?

7 A I simply looked for boundaries of the old city of South  
8 Norfolk, and it largely corresponded to some parts -- some VTDs  
9 that were already in, and by including Johnson Park, that would  
10 have had the effect of unifying the old city of South --

11 Q Let me stop. You say that would have had the effect. Was  
12 there another change that counteracted that?

13 A The VTD called Westover was also part of the old city of  
14 South Norwalk (sic), and that removed.

15 Q What's the racial composition of Westover VTD?

16 A The African-American voting-age population was  
17 11.5 percent.

18 Q How does that compare to the black voting-age population  
19 of Johnson Park?

20 A Johnson Park was 41.5 percent.

21 Q So, in the end, after adding Johnson Park and removing  
22 Westover, was the city of South -- old city of South Norfolk  
23 reunited or not?

24 A Not according to the boundaries I've been able to find.

25 Q So it continued to be split, just in a different way?

1 A Yes.

2 Q So after adding the four largely white VTDs on the eastern  
3 edge of the district, that's Oaklette, Tanglewood, Norfolk  
4 Highlands, and Indian River, didn't that have an impact on the  
5 racial composition of District 77 by pushing down the BVAP  
6 levels in that district?

7 A Yes.

8 Q So how did District 77 deal with that?

9 A It ended up removing a number of majority white VTDs.

10 Q Where are those?

11 A One I just mentioned is Westover, and I'll circle it.  
12 It's down here to the south. There's another one called River  
13 Walk which is down here. There's another one named Geneva Park  
14 here. There's another one over here called E.W. Chittum  
15 School.

16 Q So this is -- so, what's -- what do those four VTDs have  
17 in common?

18 A These are all majority white VTDs.

19 Q Why was it necessary to remove those VTDs after the  
20 addition of the four largely white VTDs in the east?

21 A Again, it was necessary to reach the target and adding a  
22 lot of white VTDs without removing some white VTDs would lead  
23 to -- would lead to the BVAP falling below the 55 percent  
24 target.

25 MR. BRADEN: Your Honor, I think I object to that

1 appears as why. He's obviously speculating on why something if  
2 so. My objection is straightforward. It's why is speculation  
3 on the reason, the motives, the decision-making is not  
4 describing what happened.

5 JUDGE PAYNE: Mr. Hamilton.

6 MR. HAMILTON: I'm not asking about the motives. He  
7 obviously has no knowledge --

8 JUDGE PAYNE: But he did talk about why, and why is a  
9 question of motive, and he can talk about effect, but he can't  
10 talk about somebody's process.

11 MR. HAMILTON: Fair enough. I'll rephrase the  
12 question.

13 JUDGE PAYNE: Objection sustained.

14 MR. HAMILTON: Thank you.

15 Q Let me ask you this then: After adding these four VTDs  
16 that were largely white on to the east that -- I think you  
17 testified that drove down the black voting-age population in  
18 the district as a whole; is that correct?

19 A Yes.

20 Q As a matter of math, without asking you for anybody's  
21 motive, how would you get the black voting-age population up?  
22 I suppose there's two options here. What's one of them?

23 A One option is to remove white VTDs.

24 Q What's the other option?

25 A To add African-American VTDs.

1 Q Which option does the map reflect?

2 A In this section of the map, we're looking at the removal  
3 of some white VTDs.

4 Q Thank you. So let's look at the center one here, Geneva  
5 Park. Geneva Park was in the benchmark; is that correct?

6 A Yes.

7 Q I'm just going to erase these circles from the screen here  
8 so we can see it a little more clearly. That created a little  
9 narrow corridor just to the north of Geneva Park; do you see  
10 that?

11 A Yes.

12 Q How wide is that?

13 A About half a mile.

14 Q Are there any roads through there?

15 A No.

16 Q If you wanted to get through there, you'd have to park  
17 your car and walk if you wanted to stay in the district?

18 A Yes, or bike --

19 JUDGE PAYNE: Excuse me. I'm lost about where you  
20 are going from where to where that there's no road.

21 MR. HAMILTON: If you are going from VTD St. Julian's  
22 -- well, just traveling. Traversing the district from the east  
23 to the west, you have -- and if you're going to stay in the  
24 district, you have to go right through that narrow corridor.  
25 I'll just circle it on the screen, but it's the junction

1 between St. Julians, and then to the west, I can't read it.

2 Just to the east of St. Julians. Do you see that? That's

3 about a half mile; is that what you said, sir?

4 A Yes.

5 Q You said it's a -- I think you testified there's no roads  
6 there through.

7 A No.

8 Q So you had to walk or ride a bike or ride a horse if  
9 you're going to go through that and stay in the district?

10 A Yes.

11 JUDGE PAYNE: I still am lost. Part of St. Julians,  
12 Fourteen and Five, for example, have no population. There's a  
13 reason for that. The question -- you are talking about walking  
14 from where; in Geneva Park through St. Julians?

15 MR. HAMILTON: No, Your Honor. Geneva Park is no  
16 longer in the district.

17 JUDGE PAYNE: So where are you talking about walking  
18 from where to where --

19 MR. HAMILTON: From St. Julians headed west trying to  
20 stay within the district.

21 JUDGE PAYNE: There are no roads, you're saying,  
22 in -- to the left, and that is -- I can't read it. I have to  
23 turn back and find out what it is.

24 MR. HAMILTON: If you stood at the border of St.  
25 Julians and started marching west, you'd find no roads to walk



1 through.

2 Q Is that right, sir?

3 A That's my understanding.

4 JUDGE PAYNE: Where is the map? 77, it shows just  
5 what the precincts are so you can read what they are?

6 MR. HAMILTON: I think there's one in Intervenors'  
7 Exhibit 94. I don't know what page it is.

8 JUDGE PAYNE: There isn't one in this book?

9 MR. HAMILTON: In this book that you are looking at,  
10 Your Honor, the two maps that -- you might find useful are page  
11 83.

12 JUDGE PAYNE: It doesn't have any names.

13 MR. HAMILTON: It won't have the names, no, I'm  
14 sorry, Your Honor.

15 JUDGE PAYNE: Okay. So you are walk from St. Julians  
16 where the populated area is across to the one that begins --  
17 the one next to it that begins with a C; okay?

18 MR. HAMILTON: That's correct.

19 JUDGE PAYNE: There are no roads there, okay.

20 Q Were there any split VTDs in this area, sir?

21 A The split VTDs in this district were further to the west.

22 Q Okay. So let's look at page 85 in the illustrative  
23 exhibit book which is figure 26 on page 68 of your report.

24 Which two VTDs were split in this area?

25 A John F. Kennedy VTD, and the other one is, I believe,

1 called Lakeside.

2 Q And can you describe how they were split.

3 A We see -- I will mark the JFK split there and the Lakeside  
4 there, and it largely corresponds to the pattern we've seen  
5 elsewhere where the VTD splits facilitate the division of  
6 African Americans in the district, and the parts of the VTD  
7 that are relatively -- have relatively smaller African-American  
8 populations are outside the district.

9 Q So this is consistent with the pattern we've seen  
10 elsewhere where either the VTD choice or the split of a VTD  
11 separates or falls along the line demarking the difference  
12 between the predominantly African-American portion and the  
13 predominantly white portion; is that right?

14 A Yes.

15 Q Just a couple more questions, and we'll wrap up. Did your  
16 analysis reveal stark splits in the racial composition of  
17 populations moved in and out of these 12 House districts?

18 A Yes, I did. I believe the maps help shed light on that.

19 Q And did your analysis reveal stark splits in the racial  
20 composition of populations moved in and out of split counties?

21 A Yes.

22 Q How about split cities?

23 A Yes.

24 Q And how about the selection of which VTDs to include  
25 within a district and outside a district?

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1 A Yes.

2 Q Did your analysis reveal stark splits in the racial  
3 composition of populations moved in and out of these districts  
4 as displayed in the VTD splits?

5 A Yes.

6 Q In your professional opinion, was the rate the predominant  
7 consideration in these 11 House of Delegates districts?

8 A Yes.

9 Q Can you explain that?

10 A Yes. I started with the 55 percent target, and I explored  
11 the ways in which that target shaped the decisions about which  
12 VTDs had to go in and out of the various districts and examined  
13 the ways in those movements of VTDs in and out of districts  
14 often contrasted with or ran into conflict with traditional  
15 redistricting principles.

16 I then noticed that there were often stark splits between  
17 African Americans and whites at the lines that formed the  
18 district boundaries and noticed that looking at -- whether I  
19 was looking at counties' VTDs or splits within VTDs, that those  
20 stark racial divisions kept reappearing in my analysis. And  
21 all of that led me to the conclusion that race was the  
22 predominant factor in drawing these districts.

23 MR. HAMILTON: Thank you, Dr. Rodden. No further  
24 questions.

25 JUDGE PAYNE: All right. I'll tell you what we'll

1 do. We'll stop for the evening and start at 9:00 in the  
2 morning. That will give you a chance to hone your  
3 cross-examination down. You need to -- you all filed yesterday  
4 a notice that you outlined at the beginning of the proceedings  
5 about what designated discovery you had agreed upon. Have you  
6 delivered to the judges two copies of those?

7 MR. HAMILTON: I don't believe so.

8 THE COURT: Would you sometime before --

9 MR. HAMILTON: Of course.

10 JUDGE PAYNE: I turn to you because I know who is  
11 going to do it. What is your name?

12 MR. HAMILTON: This is Trish Marino, Your Honor.

13 JUDGE PAYNE: We know who is going to do that. Thank  
14 you very much. We'll be in adjournment. See you in the  
15 morning.

16

17 (End of proceedings.)

18

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20 I certify that the foregoing is a correct transcript  
21 from the record of proceedings in the above-entitled matter.

22

23

24 /s/  
P. E. Peterson, RPR

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